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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola

Summary

Following a brief overview of the activities carried out by the mandate, the Special Rapporteur in the present report provides a thematic study on enforcing the accountability of States and businesses for preventing, mitigating and redressing contemporary forms of slavery in supply chains.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 24/3, renewing the mandate of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, for three years. Following a brief overview of the activities carried out by the mandate holder, the Special Rapporteur, Urmila Bhoola, then focuses on one of the priority areas as identified in her first report to the Council (A/HRC/27/53): the duty of States and responsibility of business to eliminate contemporary forms of slavery from supply chains.

II. Activities of the mandate

2. The Special Rapporteur conducted official country visits to the Niger and Belgium from 11 to 21 November 2014 and from 19 and 26 February 2015, respectively, and her mission reports are issued as addenda to the present report. She would like to reiterate her gratitude to the Government of the Niger and the Government of Belgium for the cooperation extended before and during the visit and looks forward to continued cooperation on the issues pertaining to her mandate. The Special Rapporteur also wishes to thank all those States that have extended to her an invitation for a visit.

3. Since the presentation of her report to the Council in September 2014, the Special Rapporteur has held consultations with various stakeholders and participated in several events relevant to the mandate, with those most prominent presented below.

4. On 10 September 2014, she made concluding remarks at a Council side event entitled "Religions and Slavery: What role for religions in the fight against contemporary forms of slavery?", supported by the Permanent Observer Mission of the Holy See and the Permanent Observer Mission of the Order of Malta to the United Nations Office at Geneva.

5. On 1 December 2014, she delivered a keynote speech via video message at a conference entitled "Child Labour and Responsibility of European Consumers", organized in Vienna on the occasion of the International Day for the Abolition of Slavery by the Academic Council on the United Nations System.

6. From 22 to 23 January 2015, the Special Rapporteur participated in the Global Care Advocacy Workshop, held under the auspices of the Asia Pacific Forum on Women in Law and Development, the Institute for Development Studies and Action Aid International in Bangkok, where she chaired a session on the role of the mandate in eradicating domestic servitude.

7. From 17 to 19 March 2015, the Special Rapporteur participated at the second international legal conference on contemporary forms of slavery, organized at the University of Granada, Spain, and provided an inaugural address.

8. From 25 to 27 March 2015, she presented a paper on the role of the special procedures and human rights treaty bodies in addressing criminal justice for slavery at a policy retreat on "Eradicating modern slavery: What role for international criminal justice?", organized by the United Nations University, the Freedom Fund, the Permanent Mission of Liechtenstein to the United Nations and the Journal of International Criminal Justice in New York. Prior to that, from 22 to 24 March 2015, the Special Rapporteur held consultation meetings with the Alliance to End Slavery and Trafficking, and Humanity United in Washington, D.C. She also met with the International Corporate Accountability Roundtable, Human Rights First, the United States Agency for International Development and the Bureau of International Labor Affairs.

9. The Special Rapporteur also delivered a keynote speech at the fourth international seminar on contemporary forms of slave labour, which was held at the Universidade Estadual Paulista, Franca, Brazil, from 5 to 8 May 2015.

10. On 18 June 2015, the Special Rapporteur provided an introductory statement via video message at a Council side event on the role of the United Nations in combating the intersection of caste and gender in the area of forced and bonded labour, sponsored by Human Rights Watch, the International Movement Against All Forms of Discrimination and Racism, the Minority Rights Group, Anti-Slavery International and Franciscans International and organized in association with the International Dalit Solidarity Network.

11. In relation to the present thematic report, on 2 April 2015, the mandate holder organized an expert meeting on eradicating contemporary forms of slavery from supply chains in Geneva.[1] The meeting brought together more than 20 leading experts from international organizations, businesses, employer organizations, trade unions, non-governmental organizations, investor groups, foundations and academia. The Special Rapporteur wishes to thank the expert participants for their valuable contributions to the consultation and follow-up thereto.

12. While taking note of the previous initiatives undertaken by mandate holders relating to human rights violations in the context of supply chains,[2] in the present report, the Special Rapporteur focuses, inter alia, on legal and policy frameworks and stakeholder initiatives to ensure that businesses, in relation to their supply chains, respect human rights and eradicate contemporary forms of slavery, understood for the purpose of the present report primarily as forced labour, debt bondage and the worst forms of child labour, through increased human rights due diligence and effective remediation.

III. Enforcing State and business accountability for ending contemporary forms of slavery in supply chains

13. Following egregious violations of health and building safety standards that resulted in fatal accidents, such as the 2013 Rana Plaza factory collapse in Bangladesh leading to death of over 1,100 garment workers,[3] additional attention has been given to increasing State and corporate accountability for violations of human rights, including labour rights, in global value or supply chains.[4] In this context, the recent commitment by leaders of major global economies at the recent Group of Seven (G7) Summit to take action to address human rights in global supply chains is welcome and needs to be followed up by concrete actions.[5]

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[1] See www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/ExpertMeeting2015.aspx.

[2] See, for example, A/67/261 and A/HRC/23/48/Add.4.

[3] These incidents continue to occur. The Asia Pacific Forum on Women, Law and Development called for increased business accountability after 72 women workers burned to death in factory fire in the Philippines in May 2015 (www.apwld.org).

[4] See *Ending Exploitation*, OSCE occasional paper series No.7, p.7. A United Nations Children's Fund report (Children's Rights and Business Principles, p. 9) explains that the value chain of a business "encompasses the activities that convert inputs into outputs by adding value. It includes entities with which the business has a direct or indirect business relationship and which either a) supply products or services that contribute to the business's own products or services [a 'supply chain'], or b) receive products or services from the business" (conventionally known as a production chain).

[5] See Leaders' Declaration, G7 Summit, 7–8 June 2015, pp. 4–6, https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?__blob=publicationFile&v=1. See also International Trade Union Confederation statement, available at www.ituc-csi.org/international-union-bodies-welcome.

A. International and regional normative framework for the duty of States to protect the right not to be subjected to slavery and slavery-like practices

14. The right to be free from slavery is a peremptory norm of international law from which no derogation is permitted and creates an *erga omnes* obligation on all States to protect this right. It is entrenched in the Slavery Convention of 1926 and has been incorporated into the Universal Declaration of Human Rights (art. 4), the International Covenant on Civil and Political Rights (art. 8 (1))[6] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 11 (1)).

15. In the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, the protection of the right is extended to include "institutions and practices similar to slavery", i.e. debt bondage, serfdom, servile marriage and delivering a child for exploitation. Child economic exploitation and child hazardous labour are further prohibited in the International Covenant on Economic, Social and Cultural Rights (art. 10 (3)) and the Convention on the Rights of the Child (art. 32). In the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), the elimination of the worst forms of child labour is called for, which are defined as including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour as well as hazardous work (art. 3).

16. While in the Slavery Convention reference is made to forced labour and States are called on to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery (art. 5), forced labour was not defined until the ILO Forced Labour Convention, 1930 (No. 29). The right not to be subjected to forced labour is now enshrined in a number of other international instruments, including in the ILO Abolition of Forced Labour Convention, 1957 (No. 105), the International Covenant on Civil and Political Rights (art. 8 (3)) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 11 (1)). In the ILO Declaration on Fundamental Principles and Rights at Work (1998), the elimination of all forms of forced or compulsory labour and the effective abolition of child labour is required.

17. The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29),[7] outlines measures for prevention and elimination of forced labour and emphasizes the need for victim protection and access to appropriate and effective remedies, such as compensation. One of the preventive measures it sets out is "supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour" (art. 2 (e)). The non-binding ILO Recommendation 203,[8] providing practical guidance on the Protocol, while not referring specifically to supply chains, contains a provision on preventive measures, in which States are called on to provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked (section 4 (j)). The

[6] In the Covenant and the Universal Declaration, it is stipulated that no one shall be held in servitude, although in neither of the instruments is that term defined.

[7] At the time of writing, the Protocol was not yet in force but had been ratified by the Niger on 14 May 2015.

[8] Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour, adopted by the International Labour Conference at its 103rd session, Geneva, 11 June 2014.

Protocol is largely aligned with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (see below), although it is limited because, inter alia, it focuses only on forced labour and not on all human rights violations.

18. At the regional level, States' obligation to eradicate contemporary forms of slavery is enshrined in a number of human rights instruments. Under article 4 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, slavery, forced labour and servitude are prohibited. In article 5 of the African Charter on Human and Peoples' Rights, it is stated that, inter alia, slavery and slave trade shall be prohibited. The African Charter on the Rights and Welfare of the Child, in its article 15, enshrines the protection of children from all forms of economic exploitation and from performing any hazardous work. Slavery, involuntary servitude, slave trade and traffic in women, as well as forced labour, are prohibited under the American Convention on Human Rights (art. 6). In article 10 of the Arab Charter on Human Rights all forms of slavery, servitude and forced labour are prohibited.

B. Causes and prevalence of contemporary forms of slavery in supply chains and examples of sectors at risk

19. Globalization has created unprecedented opportunities for corporations to extend their operations across national borders, including to developing countries, in order to source the cheapest products and maximize profit. The demand for cheap labour meets a ready supply of workers from vulnerable groups: indigenous people, minorities, those considered to be from the "lowest castes" and migrants, especially those in an irregular situation. Women workers are particularly vulnerable to exploitation in certain sectors given the nexus of gender discrimination and inequality.

20. Global enterprises with supply chains that are long and complex and involve complicated networks of subsidiaries, franchisees, suppliers, contractors and subcontractors are more likely to be faced with challenges related to contemporary forms of slavery. While the first tier of supply chains is less susceptible to the risk of contemporary forms of slavery, the lower levels have been shown to be at risk of products or raw materials being sourced from home-based or small workshops in the informal economy and made in situations of debt bondage, forced labour or the worst forms of child labour.

21. Although more research into the scope and prevalence of contemporary forms of slavery is required, various small-scale studies (for example, on the garment, conflict mineral, seafood, sporting goods, handmade carpet and tea industries) show that products from the informal sector enter global supply chains and are also part of domestic economies in the developing world, often in the most labour-intensive sectors.[9] Human rights violations in the sourcing of conflict minerals, for example, have received much attention,[10] but more research is required to identify the scope and prevalence of contemporary forms of slavery in supply chains of specific commodities and particular sectors. The sectors

[9] See, for example, FairFood International, "Caught in a Trap – the story of poverty behind Asian shrimp sold in European supermarkets" (2015). Available at www.fairfood.org/wp-content/uploads/2015/04/Caught-in-a-trap.pdf.

[10] For example, in relation to the sourcing of conflict minerals, where the public furore resulted in the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (adopted in May 2011 and amended in July 2012).

mentioned in the present report are therefore not meant to be a comprehensive list, but an indication of where contemporary forms of slavery have been reported to occur.[11]

22. According to ILO data from 2012, 5.5 million of the 20.9 million of persons in forced labour are children[12] and an estimated 5–15 per cent of those are working in supply chains, with the figure significantly higher if domestic supply chains are also taken into account. The lowest tiers in the informal economy are particularly at risk of involving the worst forms of child labour. In 2012, the number of children involved in hazardous work that directly endangers their health, safety and moral development, often understood as a proxy for the worst forms of child labour, was said to be 85 million in absolute terms.[13] While reliable data on those sectors most susceptible to using such work are difficult to obtain, cases of the worst forms of child labour were found in sectors that correspond to those with a high risk of contemporary forms of slavery occurring in supply chains, including agriculture (i.e., farming of raw materials such as sugar, cotton, cocoa and tobacco), construction, mining and quarrying, and garments and textiles.[14]

23. In agriculture, contemporary forms of slavery have reportedly occurred in many countries, involving crops such as sugar cane, cut flowers, fruit and vegetables, tropical nuts and commodities, for example, palm oil, cotton,[15] cocoa, tobacco and beef.[16] Production in the sector often relies on temporary or migrant labour and is characterized by complex contracting and subcontracting chains, as well as smallholder farming in some cases. Much of the work on remote farms and plantations is typified by excessive working hours, lack of compliance with labour laws, weak or non-existent labour inspections and corruption. Competition to produce at the lowest cost enhances the risk of contemporary forms of slavery being involved in agriculture, especially debt bondage in impoverished rural communities and among vulnerable categories of workers, such as indigenous people, minorities, migrants, women and children.

24. In the garment and textile sectors, reports indicate a significant risk of contemporary forms of slavery occurring in the complex subcontracting that characterizes the industry in many parts of the world, including the sometimes home-based and informal workshops operating on the margins of the formal economy. Subcontractors such as these are often overlooked both by labour inspections and due diligence systems, making workers in these supply chains particularly vulnerable to exploitation given the quick turnaround time to meet orders from global fashion brands and consumer needs. Contemporary forms of slavery have often been cited as occurring in global supply chains of international brands.[17]

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[11] A comprehensive database of reported cases, including companies' responses, can be found on the Business and Human Rights Resource Centre website (www.business-humanrights.org).

[12] See ILO, "Global Estimate of Forced Labour: Results and methodology" (2012).

[13] ILO, "Marking Progress against Child Labour: Global Estimates and Trends 2000–2012" (2013), pp. 3 and 32.

[14] ILO, "Implementing the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016: a training guide for policymakers" (2013), p. 9.

[15] Various advocacy initiatives have addressed forced labour in cotton-picking in Uzbekistan. See, for example, Anti-Slavery International (www.antislavery.org); the Uzbek-German Forum for Human Rights, "The Government's Riches, the People's Burden: Human Rights Violations in Uzbekistan's 2014 Cotton Harvest" (2015) (www.antislavery.org/includes/documents/cm_docs/2015/2/2014_cotton_harvest_report.pdf); and the OECD, "Annual Report on the OECD Guidelines for Multinational Enterprises 2012" on examples of complaints regarding sourcing of Uzbek cotton made to national contact points, and how these were addressed (http://dx.doi.org/10.1787/mne-2012-en).

[16] For example, www.verite.org/Commodities.

[17] See, for example, Centre for Research on Multinational Corporations and India Committee of the Netherlands, "Flawed Fabrics: the abuse of girls and women workers in the South Indian textile

25. Despite the various measures taken to eradicate the worst forms of child labour from the carpet industry, these forms were reported to continue to exist in handmade carpet production units in South Asia, in which carpets are produced for export mainly to the United States of America.[18] Various studies have reported the existence of contemporary forms of slavery and labour exploitation in the construction industry[19] and forced labour in the manufacturing of electronic goods has also been the subject of recent research.[20]

26. The food processing and packaging industry has been frequently implicated in labour exploitation that can amount to contemporary forms of slavery, particularly in fish and seafood processing in parts of South-East Asia.[21] Reports have been made involving workers enslaved on fishing vessels in the region.[22]

27. The mining[23] and forestry[24] sectors have also been cited in reports on forced labour in supply chains. Here risks include vulnerability arising from the isolated nature of

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industry" (2014) (www.indianet.nl/FlawedFabrics.html); Anti-Slavery International, "Slavery on the high street: forced labour in the manufacture of garments for international brands" (2012) (www.antislavery.org/includes/documents/cm_docs/2012/s/1_slavery_on_the_high_street_june_2012_final.pdf).

[18] See Siddharth Kara, *Tainted carpets Slavery and Child Labor in India's Hand-Made Carpet Sector* (2014, Harvard University).

[19] See, for example, Human Rights Watch, "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates" (2015) (www.hrw.org/sites/default/files/reports/uae0215_ForUploadR.pdf); Business and Human Rights Centre, "Labour rights and the Qatar World Cup 2022" (http://business-humanrights.org/en/major-sporting-events/labour-rights-and-the-qatar-world-cup-2022); and Human Rights Watch, "Building a Better World Cup Protecting Migrant Workers in Qatar Ahead of FIFA 2022" (2012) (www.hrw.org/reports/2012/06/12/building-better-world-cup).

[20] ILO referred to the response of a major United States electronics company to allegations of forced labour in factories in China in its publication *Combating Forced Labour: A Handbook for Employers & Business*, Good Practice Case Studies, Part 7 (2008), pp. 5–7. See also China Labor Watch, "Is Samsung Infringing Upon Apple's Patent to Bully Workers?" (2012) (www.chinalaborwatch.org/upfile/2012_9_4/Samsung%20Report%200904-v3.pdf) and "Beyond Foxconn: Deplorable Working Conditions Characterize Apple's Entire Supply Chain" (2012) (www.chinalaborwatch.org/upfile/2012_8_13/2012627-5.pdf); and Verité, "Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics" (2014) (www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysian Electronics2014.pdf).

[21] See, for example, ILO, *Caught at sea: forced labour and trafficking in fisheries* (2013) (www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf); Environmental Justice Foundation, *Slavery at Sea: the continued plight of trafficked migrants in Thailand's fishing industry* (2014) (http://ejfoundation.org/sites/default/files/public/EJF_Slavery-at-Sea_report_2014_web-ok.pdf).

[22] Robin McDowell and others, "Slavery taints global supply of seafood: AP investigation", *Washington Times*, 25 March 2015 (www.washingtontimes.com/news/2015/mar/25/slavery-taints-global-supply-seafood).

[23] See A/HRC/18/30. See also Human Rights Watch, "Precious Metal, Cheap Labor – Child Labor and Corporate Responsibility in Ghana's Artisanal Gold Mines" (2015) (www.hrw.org/sites/default/files/reports/ghana0515_forinsertLR2.pdf); *Stop Child Labour and India Committee of the Netherlands, Rock Bottom: modern slavery and child labour in South Indian granite quarries* (2015) (www.indianet.nl/RockBottom.html); Verité, "Risk Analysis of Indicators of Forced Labor and Human Trafficking in Illegal Gold Mining in Peru" (2013) (www.verite.org/sites/default/files/images/IndicatorsofForcedLaborinGoldMininginPeru.pdf); and ILO, "Buried in Bricks: A rapid assessment of bonded labour in brick kilns in Afghanistan" (2012) (www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_172671.pdf).

[24] For example, www.verite.org/Commodities/Timber.

workplaces, the role of private security firms, the presence of organized criminals attracted by high value commodities such as gold or other minerals, and the growth of illegal, unlicensed or unregulated mines and forestry operations that benefit from weak regulation and law enforcement.

C. Steps taken by States to comply with their duty to ensure business accountability for ending contemporary forms of slavery in supply chains

28. States have an obligation under international human rights law to respect, protect and fulfil the human rights of all persons in their territory and/or jurisdiction. This includes the duty to protect individuals and groups against human rights abuses committed by private actors, such as business enterprises. The Human Rights Committee, in paragraph 8 of its general comment No. 31 (2004) on the nature of general legal obligations on States Parties to the Covenant, stipulates the need for States to exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities.

29. The Guiding Principles on Business and Human Rights,[25] unanimously endorsed by the Human Rights Council in 2011, validate the duty of States to protect against and redress business-related human rights harms, and it is stipulated therein that this is to be done through effective policies, legislation, regulations and adjudication (principle 1). State duties include setting out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations (principle 2).

30. In the context of contemporary forms of slavery, this duty to protect could translate into a smart mix of measures to ensure that businesses engage in their responsibility to respect human rights, including through undertaking human rights due diligence throughout their supply chains and remediating the adverse impact of their operations on human rights. At the very minimum, States should ensure that businesses realize the implications of purchasing products or services that have in any way been linked to forced labour or other contemporary forms of slavery. To date, States have adopted diverse approaches to addressing this issue, which include ensuring criminal, civil and tort liability for business-related human rights violations, setting up mechanisms to regulate such compliance in trade and consumer protection and addressing it in government procurement. Disclosure and transparency can also feature as legal obligations rather than being limited to voluntary corporate social responsibility initiatives.[26]

31. In the most recent development, in March 2015, the Parliament of the United Kingdom passed the Modern Slavery Bill, which includes a specific part on transparency in supply chains and imposes obligations on businesses to disclose the steps, if any, they are taking to address contemporary forms of slavery in supply chains.[27] The duties imposed in

[25] In the Guiding Principles on Business and Human Rights, which operationalize Protect, Respect and Remedy: a Framework for Business and Human Rights, the different roles and responsibilities of States (first pillar) and businesses (second pillar) to address their impact on human rights and the access to remedy for business-related human rights abuse (third pillar) are clarified.

[26] For a detailed analysis of different regulatory frameworks, see International Corporate Accountability Roundtable report, "Human Rights Due Diligence: The role of States" (2012) (http://icar.ngo/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf).

[27] It is widely acknowledged that the provisions for transparency in supply chains were inserted largely owing to advocacy conducted by the Ethical Trading Initiative, a multi-stakeholder partnership of businesses, trade unions and non-governmental organizations, covering over 70 companies and in 2015 reaching nearly 10 million workers across the globe.

the Modern Slavery Act[28] can be enforced in civil proceedings undertaken by the authorities. Under the Act, company disclosures must be signed by a company director, creating clear accountability. Regulations are currently being prepared to operationalize the provisions for transparency, based on consultations. In some of the submissions for the consultations, it was suggested that a threshold be introduced that would bring even small companies within the ambit of the Act, which would require companies to reveal business relationships in the lower tiers of their supply chains and set clear criteria for disclosures in their reports; it was also suggested that reports be featured on a government website. The Act has, however, received criticism for creating a loophole that allows United Kingdom-based companies to effectively "hide" their supply chains if the goods produced do not enter the United Kingdom.[29]

32. In the context of transparency, the most often cited legislation is the California Transparency in Supply Chains Act of 2010,[30] which came into effect on 1 January 2012. Under the Act, all retailers and manufacturers with annual global revenues of over US$100 million doing business in California, whether or not they have their headquarters there, are required to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. While an important development, the law is judged to be insufficient because it only requires companies to report on what, if anything, they are doing to address contemporary forms of slavery, using five specific categories: verification, auditing, certification, internal accountability and training, and no specific preventive actions need to be taken nor does it call to improve conditions for those vulnerable to abuse in the supply chain.[31]

33. In 2014, the draft Business Supply Chain Transparency on Trafficking and Slavery Act of 2014[32] was introduced into the United States Congress. The Act, not yet adopted, contains, inter alia, reporting requirements for businesses relating to the disclosure of conditions amounting to forced labour, slavery, human trafficking and the worst forms of child labour in supply chains. At the time of writing the present report, a draft law on business human rights due diligence in supply chains was pending before the Senate in France,[33] after having been adopted by the National Assembly in the first reading in March 2015.

34. The Brazilian Ministry of Labour maintains a record of people and corporations found to be using slave labour, which has been termed the "dirty list", established by ministerial decree of 2003. The database was used by public and private companies that applied commercial and financial sanctions. The list grew to include 52 employers of slave labourers in 2003 to 609 as of July 2014. However, in December 2014, the Supreme Court granted an injunction to an association of construction companies, suspending the "dirty list". To date, attorneys from the Federal Government have not been able to re-establish the database. Another challenge to the list was launched following the Labour Prosecutor's

[28] Available at www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf.

[29] See Anti-Slavery International, www.antislavery.org/english/press_and_news/news_and_press_releases_2009/analysis_of_modern_slavery_act.aspx.

[30] Available at www.state.gov/documents/organization/164934.pdf.

[31] See Verité, "Compliance is Not Enough: best practices in responding to the California Transparency in Supply Chains Act" (2011) (www.verite.org/sites/default/files/VTE_WhitePaper_California_Bill657FINAL5.pdf), and the Alliance to End Slavery and Trafficking, "Beyond SB 657: How Businesses Can Meet and Exceed California's Requirement to Prevent Forced Labour in Supply Chains" (2013) (www.genderprinciples.org/resource_files/ATEST_Report_Beyond_SB657_final.pdf).

[32] Available at https://www.congress.gov/113/bills/hr4842/BILLS-113hr4842ih.pdf.

[33] Text No. 376 (2014–2015), available at www.senat.fr/leg/ppl14-376.pdf.

Office finding that Zara Brazil (part of global brand Inditex) had directive power over the supply chain[34] and litigation has ensued which includes a challenge to the constitutionality of the "dirty list". Also in Brazil, the Sao Paulo State Law to Combat Slave Labour, also known as the Bezerra Law, seeks to regulate the disclosure of slave labour.[35]

35. At the United States federal level, under the Trafficking Victims Protection Reauthorization Act of 2005, the Department of Labor's Bureau of International Labour Affairs is mandated to, inter alia, create and maintain a List of Goods Produced with Child Labor or Forced Labor.[36] In addition, a list of products using forced or indentured child labour is also produced by the Bureau of International Labour Affairs and intended to ensure that United States federal agencies do not procure goods made by this labour.[37] Under the Trade and Development Act of 2000,[38] the Secretary of Labor is mandated to issue beneficiary country initiatives to implement their international commitments to eliminate the worst forms of child labour. These transparency initiatives primarily provide information for government procurement but also assist investors and consumers.

36. Executive Order 13627 on strengthening protections against trafficking in persons in federal contracts, issued in September 2012, targets contemporary forms of slavery in government procurement.[39] Under the Executive Order, federal contractors, subcontractors, and their employees are prohibited from engaging in misleading or fraudulent recruitment practices; charging employees recruitment fees; and destroying, concealing, confiscating or otherwise denying an employee access to their identity documents, such as passports or drivers' licences (section 2 (1)(A)(i)–(iii)). Under the Order, contractors and subcontractors are further required to agree to fully cooperate, by contractual agreement, in providing reasonable access to enforcement agencies to conduct audits, investigations and other actions to assess compliance with the Trafficking Victims Protection Act of 2000 (section 2 (1)(B)). The Federal Acquisition Regulation[40] that needed to be updated following the Executive Order and related requirements in the Ending Trafficking in Government Contracting Act (set forth in the National Defense Authorization Act for 2013)[41] entered into force in March 2015, hence it is difficult to comment on its impact in practice.

37. The United States Tariff Act of 1930 is also relevant to supply chains and goods produced using forced labour. In section 1307 of the Tariff Act, the import of goods produced with prison labour and forced labour is specifically prohibited: "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the

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[34] See Repórter Brasil and SOMO, *From Moral responsibility to legal liability — modern day slavery conditions in the glo[illegible]al garment supply chain and the need to strengthen regulatory frameworks: the case of Inditex-Zara in Brazil* (2015) (www.cleanclothes.org/resources/national-cccs/from-moral-responsibility-to-legal-liability).

[35] Law No. 14.946/2013, available at www.al.sp.gov.br/repositorio/legislacao/lei/2013/lei-14946-28.01.2013.html.

[36] United States Department of Labor, list of goods produced with child labor or forced labor, available at www.dol.gov/ilab/reports/child-labor/list-of-goods/.

[37] Under Executive Order No. 13126 of 1999 on prohibition of acquisition of products produced by forced or indentured child labor and available at www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm.

[38] Available at www.dol.gov/ilab/about/laws/pdf/20000518TDA.pdf.

[39] See www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe.

[40] See https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf.

[41] See www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf.

importation thereof is hereby prohibited". The terms forced labour or/and indentured labour include forced or indentured child labour.

38. Restrictions on trade that has negative human rights impact is particularly relevant to addressing slavery and slavery-like practices in supply chains. The Alliance to End Slavery and Trafficking, and Humanity United have recently supported initiatives in the United States Congress to strengthen human rights provisions in trade agreements. This followed a proposed amendment to the Trade Act of 2015[42] to prohibit an international trade agreement from receiving fast-track benefits if it involves a country that is not meeting minimum standards in combating human trafficking.[43]

39. Although the assessment of the efficacy of these legislative developments in practice is beyond the scope of the present report, they provide a snapshot of the issues that impact on the challenge of States to regulate the human rights conduct of businesses operating supply chains outside domestic economies. In these cases, risks and violations are often off-shored, resulting in lack of redress under domestic laws, but having significant impact on the human rights situation in developing economies. This results in challenges to effectively address business-related human rights harms in supply chains and requires sustainable and holistic solutions that involve all stakeholders in the supply chain.

D. International framework for the responsibility of businesses to respect human rights

40. In the Universal Declaration of Human Rights, every individual and every organ of society is required to strive to contribute to the universal and effective recognition and observance of human rights for all. While it is commonly accepted that under international human rights law businesses have a responsibility to respect human rights, there is as yet no international legal duty for them to protect human rights. Human rights due diligence, i.e. a continuous process of identifying and addressing the human rights impact of a company across its operations and products, and throughout its supplier and business partner networks,[44] is therefore the primary standard used to assess business compliance with its human rights responsibilities.

41. Under principle 12, of the Guiding Principles on Business and Human Rights, which in their second pillar clarify the business responsibility to respect human rights, this responsibility applies to all internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. All businesses are required to avoid causing or contributing to adverse human rights impacts through their own activities, address such impacts when they occur and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts (principle 13). Under principle 12 in conjunction with principle 13 (which refers to "business relationships" that are understood to include relationships with business partners, entities in the value chain, and any other non-State or State entity directly linked to its business operations, products or services, i.e. entities in its supply chain beyond the first tier and indirect as well as direct

[42] Available at https://www.congress.gov/bill/114th-congress/house-bill/1314/text.

[43] See David Abramowitz, "Trade legislation can help stop human trafficking", *The Hill*, 10 June 2015 (http://thehill.com/blogs/pundits-blog/international/244538-trade-legislation-can-help-stop-human-trafficking).

[44] See *Frequently asked questions about the Guiding Principles on Business and Human Rights* (United Nations publication, Sales No. E.14.XIV.6), p. 27. Available from www.ohchr.org/Documents/Publications/FAQ_PrinciplesBussinessHR.pdf.

business relationships),[45] it is made clear that there is a responsibility on the part of businesses to effectively address contemporary forms of slavery in their supply chains.

42. In order to meet their responsibility to respect human rights, businesses need to, as per principle 16, adopt human rights policy statements, the criteria for which are set out in this principle. The responsibility to respect also requires ongoing human rights due diligence to identify, prevent, mitigate and account for human rights impacts (principles 17–21). The Guiding Principles on Business and Human Rights also state that, where businesses identify that they have caused or contributed to adverse human rights impacts, they should have processes in place to enable remediation (principle 15).[46]

43. The Guiding Principles on Business and Human Rights provide conceptual and operational clarity for the two human rights principles of the Global Compact Initiative,[47] a broad-based multi-stakeholder initiative addressed to business, launched in 2000. The Global Compact brings together Governments, employers, civil society groups and trade unions, as well as other stakeholders, on the basis of 10 universally accepted principles of human rights, labour, environment and the fight against corruption. The principles are drawn from key United Nations and ILO standards, with contemporary forms of slavery figuring prominently among the categories of human rights and labour rights (principles 1, 2, 4 and 5). Since the Global Compact's launch, more than 12,000 participants, including over 8,000 businesses from 145 countries, have joined. The high number of the initiative's participants is commendable, but the most obvious gap of Global Compact is in terms of a follow-up mechanism for monitoring and implementation, since businesses need only to communicate annually on progress made in implementing the 10 principles.

44. The first initiatives at the international level to address conduct of businesses emerged in the 1970s. In 1977, ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (subsequently amended in 2000 and 2006). It commits Governments, employers' and workers' organizations and multinational enterprises to respecting the Universal Declaration of Human Rights and the International Covenants adopted by the General Assembly. In 2014, the ILO Governing Body adopted an implementation strategy for a new follow-up mechanism to the Declaration[48] (which is not yet aligned with the Guiding Principles on Business and Human Rights) envisaging public-private initiatives and technical cooperation, as well as awareness-raising, capacity-building, country-level support, research and information-gathering.

45. The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises[49] were adopted in 1976 and updated five times, most recently in May 2011 to include a new chapter on human rights and business consistent with the Guiding Principles on Business and Human Rights. In the Guidelines, explicit reference is made to the responsibilities of multinational enterprises in relation to their supply chains.[50] A system of national contact points — a non-judicial mechanism that the adhering countries are obliged to set up — are established thereunder. National contact points contribute to the

[45] See ibid., p. 32.

[46] See section F.

[47] For more information, see www.unglobalcompact.org/. See also OHCHR, "The United Nations Guiding Principles on Business and Human Rights: Relationship to United Nations Global Compact Commitments – July 2011 (Updated June 2014)" (https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf).

[48] GB.320/POL/10, 14 February 2014. Available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_236168.pdf.

[49] One of four instruments of the 1976 OECD Declaration on International Investment and Multinational Enterprises. See http://mneguidelines.oecd.org/text/.

[50] See commentary on general policies contained in the OECD Guidelines for Multinational Enterprises, para. 10 (www.oecd.org/daf/inv/mne/48004323.pdf).

resolution of issues that arise from alleged non-observance of the Guidelines (so called specific instances mechanism).[51] In dealing with specific instances, which are not legal cases, national contact points must make an initial assessment to determine if the issues raised merit further examination, assist in resolving the instances through offering good offices, and make the results of the procedure publicly available. Despite the value of this grievance mechanism, which is accessible to any interested party, the national contact point system has been criticized by civil society on multiple counts and specific recommendations have been provided to strengthen it.[52] Business compliance with other guidelines, for example the Dhaka Principles for Migration with Dignity that relate to reducing exploitation from the moment of the recruitment process is critical to reducing the incidence of forced labour and other contemporary forms of slavery at all levels of supply chains.[53]

E. Business and stakeholder initiatives to address contemporary forms of slavery in supply chains

46. Global brands and other transnational corporations operating complex supply chains that span multiple jurisdictions have increasingly adopted voluntary codes of conduct to address contemporary forms of slavery in their operations, as well as those of their suppliers, prompted mainly by reputational risk. The voluntary codes cover a wide variety of issues, from social and environmental to human rights and anti-corruption. Policies that clearly prohibit forced labour are now commonplace in codes across companies of different sizes and operating in different regions and sectors. A key recent innovation is the development of policies that address recruitment and hiring in labour supply chains by banning private employment or recruitment agencies supplying workers to facilities in their supply chains from charging recruitment fees to those workers.[54]

47. Despite their important role in complementing the normative framework, voluntary codes of conduct are often bald statements without any independent monitoring mechanisms and leave numerous gaps in protection if they do not apply to all entities, especially informal sector and home-based suppliers and subcontractors. However, an increasing number of steps are being taken to implement voluntary codes, involving a diverse set of strategies, typically starting with some form of compliance assessment conducted at workplace level in businesses' supply chains. These are commonly called "social audits" and frequently address other standards in addition to human rights issues, depending on the codes upon which they are based.

48. While businesses continue to rely on social audits as a key element of their human rights due diligence programmes and to assess their own facilities and those of their business partners, many believe that auditing has had a limited impact on identifying and eliminating contemporary forms of slavery from supply chains. New strategies are therefore required that move beyond auditing and include proactive independent investigations and robust independent verification, which incorporate consultations with workers with due

[51] To date, approximately 300 instances have been addressed by national contact points, covering a range of issues, including human rights, employment and industrial relations. See http://mneguidelines.oecd.org/database/.

[52] See, for example, OECD Watch, *Remedy Remains Rare – An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct* (2015) (http://oecdwatch.org/publications-en/Publication_4201).

[53] See also, for example, the ILO Fair Recruitment Initiative and the International Organization for Migration initiative on ethical recruitment.

[54] For example, the Electronics Industry Citizenship Coalition has adopted a "no fees" policy for its members.

regard to confidentiality and privacy. Consumer and trade union advocacy can play an important role in ensuring the involvement of workers and their representatives in such processes. Largely as a result of stakeholder criticism, some companies have already piloted new protocols that prioritize the confidential testimony of workers and attempted to develop more robust investigative techniques, sometimes in partnership with civil society.[55]

49. Company-level grievance mechanisms, which range from complaints boxes to telephone hotlines, are being created to identify human rights violations and other forms of abuse. Their effectiveness is often dependent on information exchange between business peers and companies often rely on multi-stakeholder initiatives to develop efficient systems.

50. Another strategy in tackling the risk of contemporary forms of slavery in supply chains relates to transparency and reporting,[56] on the one hand, and traceability, on the other. In both cases, pressure from regulators, civil society actors and investors has pushed companies not only to disclose information about business relationships in supply chains, but to implement measures to track products and materials from finished goods to the commodities level to promote "clean" production at every step of the way. However, opinion remains divided on the effectiveness of these initiatives in improving conditions for workers and, in particular, for addressing contemporary forms of slavery.

51. Certification has arisen as another key approach from increased consumer, trade union and other civil society awareness. The most well-known is the Fairtrade Mark, which can be found on a wide range of products — over 27,000 — and certifies that those products meet internationally agreed Fairtrade Standards, including those relating to child labour and labour rights.[57] In another example, the GoodWeave[58] certification label provides assurance that no child labour was used in the manufacture of rugs.

52. Given the complexity and span of supply chains, identifying and eradicating contemporary forms of slavery can be successful only if sustainable and effective multi-stakeholder partnerships and initiatives involving the authorities, businesses, trade unions, consumers and other stakeholders, each acting from their own areas of expertise to enforce mutually agreed goals, are formed. Such initiatives are frequently international in scope, given the breadth of transnational operations. Some focus on a single sector, industry or commodity,[59] while others are cross-sectoral.[60] Others focus on a single issue like child or forced labour,[61] while many typically address a cross-section of labour and human rights issues alongside the environment and general principles of ethical business.[62]

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[55] For example, Apple, Hewlett Packard, Patagonia, Gap Inc., Coca Cola, the Arcadia Group and Philip Morris International.

[56] Voluntary commitments to transparency are, for example, required by companies that use the framework established by the Global Reporting Initiative.

[57] www.fairtrade.net.

[58] www.goodweave.org.

[59] For example, the Fair Wear Foundation or Fair Labour Association, both of which address apparel only.

[60] Such as Social Accountability International and the Ethical Trading Initiative. The latter developed a Base Code guiding its members to comply with ILO standards (e.g. fair recruitment, humane working conditions, decent work and a living wage) as a means of preventing forced labour and other contemporary forms of slavery (see www.ethicaltrade.org/eti-base-code).

[61] Including the Eliminating Child Labour in Tobacco Growing Foundation and the International Cocoa Initiative. Both participate in the Child Labour Platform, a thematic membership-based work stream of the Human Rights and Labour Working Group of the Global Compact, opened to companies, other United Nations agencies, trade unions, business associations and other relevant stakeholders, and focused on child labour, particularly in supply chains.

[62] For example, the Roundtable on Sustainable Palm Oil and the Responsible Jewellery Council.

53. An example of good practice is the multi-stakeholder public-private platform Project Issara[63] initiated by Anti-Slavery International to tackle modern slavery in South-East Asia, with an initial focus on forced labour in the export-oriented industries of Thailand that affect global supply chains. Another well-known example of a multi-stakeholder private-public initiative is the National Pact for the Eradication of Slave Labour in Brazil, which brings companies together to combat slave labour with the assistance of ILO, non-governmental organizations (including Repórter Brasil and Ethos) and support from the Government. Over 400 companies and trade associations had signed the pact as of May 2014, including large companies such as Walmart Brazil, committing not to do business with people and companies involved with slave labour.[64]

54. Multi-stakeholder initiatives help to address questions of credibility and effectiveness that have surrounded business-only and corporate social responsibility strategies. They offer a more inclusive model as they involve various stakeholders and thus provide a long-term solution to addressing risks to contemporary forms of slavery in supply chains. Those multi-stakeholder platforms that are genuinely premised on social partnership and involve trade unions have the additional benefit that they can ensure collaboration across a number of initiatives including public-policy advocacy and grievance resolution.

55. Investors have also begun to play an increasing role in requiring human rights due diligence.[65] Furthermore, civil society actors have been at the forefront of challenges to contemporary forms of slavery in supply chains[66] and civil society "naming and shaming" of companies has resulted in some businesses responding positively by adopting or adjusting their policies and practices.[67] A welcome initiative in the reporting context is the recently launched United Nations Guiding Principles Reporting Framework, which provides guidance for companies to report on how they respect human rights.[68]

F. Corporate legal liability and access to remedies in cases involving contemporary forms of slavery in supply chains

56. States have a duty under international human rights law to ensure the right to a remedy, including equal and effective access to justice and adequate, effective and prompt reparations for human rights violations. For victims of gross violations of international human rights law, such as slavery and slavery-like practices, full and effective reparation may take the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[69] In the third pillar of the Guiding Principles on Business and

[63] www.projectissara.org.

[64] For signatories, see www.pactonacional.com.br.

[65] The Interfaith Centre on Corporate Responsibility "No fees" Initiative targets the risk of debt bondage faced by migrant workers resulting from fee-charging for recruitment and employment services and uses the strength and influence of investors to target 12 companies in the palm oil and seafood sectors to clearly demonstrate their commitment to respect human rights (www.iccr.org/no-fees-initiative).

[66] A well-known example is the Coalition of Immokalee Workers, which mobilized consumers in the Campaign for Fair Food and led to successful prosecutions for slavery on tomato farms in the United States.

[67] For example, after a report by the Fair Labor Association that Nestlé was using child labour in its cocoa supply chain, the company strengthened its Nestlé Cocoa Plan, adopting all recommendations. (The case is cited together with other examples in the International Corporate Accountability Roundtable, "Persisting Harm: Corporate Responsibility and Accountability for Human Trafficking and Slavery" (forthcoming, on file).)

[68] See www.ungpreporting.org. Early adopters include Unilever, Nestlé, H&M and Newmont.

[69] Right to an effective remedy for violations of international human rights law can be found in a number of international and regional instruments. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights

Human Rights, clear guidance is set out on "access to remedy", delineating respective roles for both States and business.

57. Prior to that, principle 22 in the second pillar states that where businesses identify that they have caused or contributed to adverse human rights impacts, they should provide for or cooperate in their remediation through legitimate processes. Where businesses have not caused or contributed to harm but it is directly linked to their operations, products or services by a business relationship, they are encouraged to take a role in providing remediation. In terms of operational principles under the third pillar, the Guiding Principles on Business and Human Rights, call on companies to establish or to participate in effective operational-level grievance mechanisms for those adversely impacted by them, so that grievances can be addressed early and remediated directly (principle 29). Such mechanisms are typically administered by enterprises, alone or in collaboration with other relevant stakeholders. They can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either, and can also make it possible to prevent harm from compounding or escalating. To ensure their effectiveness, the Guiding Principles on Business and Human Rights state that the operational-level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue (principle 31). There are already some good practice examples of operational-level grievance mechanisms.[70]

58. As part of its duty to protect against business-related human rights abuses, the State is required to take appropriate steps to ensure that those affected have access to effective remedy when abuses occur within their territory and/or jurisdiction and to reduce barriers that could lead to a denial of this access. In the Guiding Principles on Business and Human Rights, it is indicated that this is to be achieved primarily through State-based judicial mechanisms and non-judicial grievance mechanisms, which are complementary in nature (principles 25–27). States are also encouraged to consider ways to facilitate access to effective non-State based grievance mechanisms that can have the benefit of reduced costs, increased speed of access and transnational reach, where States may be more limited. These may be non-judicial business, industry or multi-stakeholder mechanisms; or they may be regional or international human rights bodies (see principle 28).

59. For victims of contemporary forms of slavery, including those in supply chains, remedies may include compensation, medical and psychological care, free legal aid and social services, effective measures aimed at the cessation of continuing violations and alternative livelihood support measures. However, the right to an effective remedy for many workers, in particular the most vulnerable in supply chains, remains largely elusive and redress for corporate human rights violations is hampered by many barriers, including the high costs of litigation and a lack of a free legal aid. Moreover, the victims, especially if not members of trade unions, may not be aware that their rights have been violated. In extreme instances, workers may be enslaved and physically unable to enforce their rights.[71]

Law and Serious Violations of International Humanitarian Law.

[70] See for instance, International Petroleum Industry Environmental Conservation Association for an example in the global oil and gas industry ("Operational level grievance mechanisms: good practice survey", www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey).

[71] For a comprehensive account of barriers to access to remedies, see Gwynne Skinner and others, *The Third Pillar: access to judicial remedies for human rights violations by transnational businesses* (2013, International Corporate Accountability Roundtable). The report seeks to understand which barriers are most insurmountable for victims of abuses of human rights by transnational business and to provide recommendations for each of the jurisdictions examined regarding how the States can better fulfil their duty to reduce these barriers. On the right to an effective remedy, see also the OHCHR initiative on enhancing accountability and access to remedy in cases of business

60. Given the gravity of slavery and slavery-like practices as gross human rights violations, judicial remedies are a key form of securing accountability for business-related human rights abuses. Access to justice for victims in this context is, however, often constrained by legal rules limiting the liability of a corporation for human rights violations not directly arising from its business operations. This is a problem in global supply chains whereby the business enterprise sourcing the product is not directly implicated in the exploitation that occurs lower down the supply chain, but is complicit as a result of failing to comply with its human rights due diligence obligations. Also, vicarious liability rules prevent corporate liability for management conduct in many instances which arise in the disarticulation in the supply between the global retailer and the many small subcontractors at the lowest tier.

61. In the context of supply chains, a lack of extraterritorial jurisdiction affects access to remedies for contemporary forms of slavery and other human rights violations, which are committed outside the territory in which a business is domiciled. In this context, the United States Supreme Court held, for example, in *Kiobel v. Royal Dutch Petroleum, Co.*, that the presumption against the extraterritorial application of United States law applies to the Alien Tort Statute,[72] and this can only be overcome if the claim "touches and concerns" the territory of the United States "with sufficient force" to displace the presumption against extraterritorial application.

G. Some challenges and gaps to ensuring the accountability of States and businesses for contemporary forms of slavery in supply chains

62. Despite notable improvements in recent years, gaps in legal and regulatory protection for the human rights of victims of contemporary forms of slavery exist in a number of countries. This has a significant impact on enforcing corporate legal liability.[73] In many cases, States also lack an integrated approach to criminal, labour and human rights laws, which impedes law enforcement and prevents effective investigation and prosecution of abuses. Where the legislative framework does exist, in some instances this is affected by lengthy legal proceedings and corruption, including bribery, which means that access to remedy is slow and victims are reluctant to come forward as a result.

63. In other cases, some legal jurisdictions are part of the problem, exacerbating the vulnerability of workers to contemporary forms of slavery. This is the case in countries where laws tie migrant workers to specific employers, preventing them from leaving without the employer's authorization. In some countries, for example, certain categories of workers are not guaranteed their right to freedom of peaceful assembly and association and thus not allowed to form or join trade unions or hold office within them, which adds to their vulnerability.

64. It also remains a challenge for transnational businesses with complex supply chains to conduct human rights due diligence on all levels of their supply chains, particularly where they have no direct business relationship with subcontractors.[74] The same applies for

involvement in human rights abuses (www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx), progress report of the United Nations High Commissioner for Human Rights on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses (A/HRC/29/39) and A/HRC/17/35.

[72] Available at www.supremecourt.gov/opinions/12pdf/10-1491_l6gn.pdf.

[73] See International Corporate Accountability Roundtable, "Persisting Harm".

[74] In the commentary to principle 17 of the Guiding Principles on Business and Human Rights, it is acknowledged that, where businesses have large numbers of entities in their value chains it may be

labour supply chains, the informal economy and the production, harvesting or extraction that occurs at the commodities level of the global economy.

65. A key gap is the lack of research and data in identifying the exact scope and prevalence of contemporary forms of slavery in specific supply chains and related to particular commodities, as well as its prevalence in the informal sector, which could enable strengthened and targeted policy and normative response and practical strategies. More research and data is also needed on domestic supply chains.[75]

66. Global businesses have the capacity and resources to address, jointly with relevant stakeholders, the root causes of contemporary forms of slavery, particularly structural issues relating to discrimination, poverty and inequality and should use this leverage more prominently.[76] There is also the need for increased dialogue and cooperation among all stakeholders working on the issue of contemporary forms of slavery in supply chains, also within the international community, in order to combine their efforts to ensure its eradication, including in relation to the 2016 International Labour Conference general discussion on the issue of decent work in global supply chains.

IV. Conclusion and recommendations

67. **The present report provides an indication of some of the challenges in enforcing accountability of States and businesses for preventing, mitigating and redressing contemporary forms of slavery in supply chains. The framework emerging from the United Nations system has provided greater clarity on how to operationalize the responsibility of business to respect human rights, including through conducting human rights due diligence, and the obligations of States to address business-related human rights abuses. The passing of national laws, which reflect an increasing global concern with transparency, reporting and human rights due diligence obligations that add to the accountability tool belt, is to be applauded. So are the businesses' human rights policy commitments, although loopholes exist in terms of their enforcement, and the important role played in the combat against contemporary forms of slavery in supply chains by other stakeholders, including civil society actors, such as non-governmental organisations, trade unions, foundations and consumers, as well as international organizations and the media. While these developments are notable, important gaps still exist in terms of effective access to justice and adequate and prompt remediation for victims of contemporary forms of slavery in supply chains.**

68. **Against this backdrop, the Special Rapporteur wishes to make the following recommendations to States:**

(a) States should ratify all relevant international instruments prohibiting slavery and slavery-like practices, including the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), align their domestic legislation with international

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unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

[75] In this context it is noteworthy that the Freedom Fund has provided a grant to Focus on Labour Exploitation (FLEX) to develop a Modern Slavery Accountability Database, an online database of national laws and regulations on individual and corporate accountability for modern slavery.

[76] The Working Group on the issue of human rights and transnational corporations and other business enterprises, in its report, addressed the role business can play in the finalization of the proposed sustainable development goals (A/HRC/29/28).

standards, criminalize all contemporary forms of slavery and provide adequate penalties for violations;

(b) States should develop, enact and update a national action plan on business and human rights in accordance with the guidance provided by the Working Group on the issue of human rights and transnational corporations and other business enterprises. Measures outlined in the national action plan should take full advantage of the leverage home States have in order to effectively prevent, address and redress extraterritorial human rights harms of businesses domiciled in their territory and/or jurisdiction;

(c) To support effective implementation of domestic laws, States should strengthen their institutional frameworks and enforcement mechanisms across relevant structures, including labour inspectorates, the judiciary and prosecution, through provision of continued capacity-building, awareness-raising and adequate human and financial resources;

(d) In addition to adoption and effective enforcement of human rights and labour laws, such as those ensuring the right to freedom of peaceful assembly and association and providing for minimum labour standards, States bear a fundamental duty to address the preventive aspect of contemporary forms of slavery through tackling its root causes, including poverty, discrimination, stigmatization, inequality and social exclusion of groups most vulnerable to slavery and slavery-like practices, by adopting a human-rights based approach and incorporating a gender perspective;

(e) States must ensure that those affected by business-related human rights abuse, including victims of forced labour and other contemporary forms of slavery, have the right to an effective remedy by taking appropriate steps to ensure the effectiveness of judicial mechanisms, providing effective and appropriate non-judicial grievance mechanisms, facilitating access to effective non-State-based grievance mechanisms and reducing barriers that could deny access to remedy for victims;

(f) States are strongly encouraged to adopt effective legislation requiring transparency in supply chains, human rights due diligence throughout supply chains, public reporting and disclosures of businesses, as well as measures relating to procurement practices, and to guarantee its implementation;

(g) States should explicitly prohibit fraudulent and abusive recruitment practices that are one of the main causes of contemporary forms of slavery in supply chains and adopt measures to regulate recruitment;

(h) States should invest in research and collection and analysis of data on the scope and prevalence of contemporary forms of slavery in supply chains, specific commodities, sectors, the informal economy and in domestic production as the foundation for effective policy and strategy formulation by both public and private sector actors;

(i) Special attention of States should be given to the risk of contemporary forms of slavery in the informal economy, including by identifying at risk sectors and conducting effective labour inspections;

(j) States should consider different strategies to promote voluntary initiatives, especially multi-stakeholder public-private partnership platforms, which include Governments at all levels, civil society actors, including trade unions, business representatives and other stakeholders. These are crucial to effectively and holistically address contemporary forms of slavery in supply chains and can, inter alia, foster dialogue on policies to best tackle its root causes, provide an institutional framework to develop and implement supply chain strategies, grievance mechanisms and

remediation, advocacy on legal and public policy reform, as well as to promote certification and independent investigation. Community- and area-based approaches, which do not target a single crop or commodity, are a key form of a partnership.

69. In relation to businesses, the Special Rapporteur recommends the following:

(a) Businesses should adopt human rights policy commitments and conduct continuous human rights due diligence in line with the framework established in the Guiding Principles on Business and Human Rights, and include the findings of the latter in their policies and procedures aimed at eliminating contemporary forms of slavery from supply chains;

(b) Human rights policy commitments and supporting policies and procedures should be complemented by effective implementation which moves beyond auditing, and includes third party independent monitoring, proactive investigations, random unannounced assessments that prioritize confidential consultation with workers and strategies linked to prevention of unethical recruitment in supply chains;

(c) All businesses' human rights policies and procedures and the systems to implement them should integrate measures reaching beyond the first tier in supply chains and include clear guidelines and indicators to assist those operating at the lower tiers and in the informal economy to identify human rights violations, including contemporary forms of slavery, and ensure compliance with international human rights standards;

(d) Transparency in supply chains is important for ensuring corporate accountability for human rights abuse. Businesses should publicly report on action undertaken to address their human rights impacts, including preventive and corrective measures, and share lessons learned and strategies for improvement;

(e) Businesses should provide for or cooperate in remediation by establishing or participating in an operational-level grievance mechanism, in accordance with the Guiding Principles on Business and Human Rights, and cooperate with State-based judicial and non-judicial grievance mechanisms. The approach adopted by businesses in providing for a timely and effective remedy should be community-based and inclusive of, for example, public and/or non-governmental service providers with expertise in working with victims of contemporary forms of slavery;

(f) Gaps in national legislation and underdeveloped regulatory infrastructure can pose significant risks for contemporary forms of slavery in supply chains. To address this, businesses, working in partnership with business peers and other stakeholders or though representative industry and employer organizations, should engage public policy actors and regulators to encourage adoption of a relevant legal framework and effective law enforcement. Businesses, together with other stakeholders, also have an important role to play in addressing the root causes of contemporary forms of slavery;

(g) Business should engage in capacity-building to ensure management and staff, as well as the relevant business partner, awareness-raising on the nature and risks of contemporary forms of slavery in supply chains and the strategies for its eradication.

70. The Special Rapporteur would like to make the following recommendations to other stakeholders:

(a) International organizations and the donor community have an important role to play in providing a forum for stakeholder dialogue and partnership to address

contemporary forms of slavery in supply chains and to empower communities. They are encouraged to assist the States and other actors, if needed, by providing technical assistance for research, capacity-building, remediation and for addressing root causes through human rights-based development and poverty reduction programmes;

(b) Investors should use their leverage to exercise pressure on businesses to respect human rights, raise awareness of the risks of slavery and slavery-like practices in supply chains, build capacity, invest in research and data collection and analysis, and ensure that businesses establish relationships with other relevant actors, including through multi-stakeholder platforms;

(c) Consumers should play a more active role in scrutinizing the origin of products and promoting ethical sourcing and other fair trade initiatives;

(d) Trade unions and their confederations have a key role to play in ensuring that the human rights of workers are complied with by States and businesses;

(e) Other civil society actors, including foundations, and academia, and the media should continue to conduct research, investigate and report on human rights violations in supply chains, highlight areas of non-compliance with international human rights norms and standards and call for an effective and prompt action by those responsible.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola

Addendum

Mission to the Niger*

Summary

In the present report, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, presents her main findings from her country visit to the Niger, conducted from 11 to 21 November 2014. After an analysis of the country's legal, institutional and policy framework, the Special Rapporteur highlights the major issues of concern for her mandate, including descent-based slavery, the practice known as *wahaya*, child marriage, the worst forms of child labour and domestic servitude. While commending the criminalization of slavery in 2003 and acknowledging the Government's commitment to eradicating slavery and slavery-like practices, the Special Rapporteur points to a number of challenges the Government faces to address effectively the root causes of slavery, including poverty, inequality and customary norms that cause widespread discrimination against former slaves and their descendants and undermine efforts to create alternative livelihoods. She concludes with some key recommendations to assist the Government in intensifying its efforts, with the support of national and international partners, to improve the coordination and streamlining of anti-slavery efforts, ensure effective law enforcement, increase access to justice and enhance victim protection and empowerment.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and French only.

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Annex

[English and French only]

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, on her mission to the Niger (11–21 November 2014)

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I. Introduction

1. Pursuant to the mandate conferred by the Human Rights Council in its resolution 24/3, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, conducted an official visit to the Niger from 11 to 21 November 2014. She is thankful to the Government of the Niger for extending an invitation to her and for its support in the preparation and conduct of the visit.

2. The Special Rapporteur is grateful to the Prime Minister, the Minister of Justice and several other ministers and senior government representatives, as well as representatives of the National Assembly and the judicial branch and law enforcement authorities at various levels with whom she met. She also wishes to thank the other stakeholders, including the National Human Rights Commission, religious leaders and traditional chiefs, local and international non-governmental organizations (NGOs), labour unions, academics, researchers, members of the diplomatic community and the United Nations country team, for their time and for the extensive support provided.

3. The Special Rapporteur held meetings in Niamey and in the regions of Tillabéry and Tahoua. She met with residents in the villages of Gountou Koira, Zongo Ablo, Mbanga, Tajaé and Aroki and is indebted to everyone who shared their experiences with her. She wishes to reiterate her thanks to the United Nations Resident Coordinator and his team, in particular the National Human Rights Officer, for coordinating and facilitating the visit.

4. The Special Rapporteur attaches great importance to the constructive spirit in which her visit was received and extends to the Government her continued support for engagement on the issues raised in the present report.

II. Background

5. Historically, slavery existed in almost all the regions that now comprise the Niger[1] and was practised by all the main ethnic groups. Following French colonization, the colonial administration initially collaborated with traditional chiefs to supply slaves for the transatlantic trade. In 1905, the administration officially abolished the slave trade in the territory of French West Africa.[2] Legislation was complied with primarily in the sedentary regions in the south, while slavery continued to be practised in the nomadic regions in the north, where few Tuareg chiefs were ever forced to comply.[3]

6. After the Niger gained independence on 3 August 1960, slavery continued as a result of the power exercised by traditional chiefs, who were allies of the political leadership and

[1] The Niger is divided into eight regions: Agadez, Diffa, Dosso, Maradi, Tahoua, Tillabéry, Zinder and Niamey capital district.

[2] Colonial decree of 12 December, modified by the decree of 8 August 1920 on the abolition of the slave trade in French Equatorial Africa. Forced labour was legally abolished by the colonial administration in Act No. 46-0645 of 11 April 1946 (Galy Kadir Abdelkader, ed., "Slavery in Niger – historical, legal and contemporary perspectives" (Anti-Slavery International and Association Timidria, 2004), pp. 42 and 48).

[3] Ali R. Sékou and Saidou Abdoulkarimou, "The legacy of slavery in Niger", in Beate Andrees and Patrick Belser, eds., *Forced Labor: Coercion and Exploitation in the Private Economy* (2009), pp. 72–73.

retained their roles as enforcers of customary law, and the authorities remained silent on the issue for a long time.[4]

III. Normative and institutional framework

A. International legal framework

7. The Niger is party to most of the core human rights instruments and almost all of their optional protocols.[5]

8. When the Niger ratified the Convention on the Elimination of All Forms of Discrimination against Women it did so with reservations,[6] citing existing customs and practices. The Committee on the Elimination of Discrimination against Women has called on the State to withdraw its reservations, to eliminate negative cultural practices and stereotypes that are harmful to and discriminate against women and to promote full enjoyment of women's human rights (CEDAW/C/NER/CO/2). The Special Rapporteur endorses the Committee's recommendations, since it is clear that gender-based discrimination and inequality are among the root causes of contemporary forms of slavery affecting women and girls.

9. The Niger is party to the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It has also ratified the following international instruments prohibiting contemporary forms of slavery: the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), the ILO Abolition of Forced Labour Convention, 1957 (No. 105), the ILO Minimum Age Convention, 1973 (No. 138), the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). After the Special Rapporteur's visit, the Niger became the first country to ratify the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), on 14 May 2015.

B. Regional legal framework

10. The Niger has ratified the African Charter on Human and Peoples' Rights, which, in its article 5, provides for the prohibition of "all forms of exploitation and degradation of man", including, in particular, slavery and the slave trade. It is party to the African Charter on the Rights and Welfare of the Child and a signatory of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

11. The most recent periodic report that the Niger submitted to the African Commission on Human and Peoples' Rights, covering the period from 2003 to 2014, was considered in April 2015.

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[4] Abdelkader, "Slavery in Niger", pp. 54 and 57.

[5] The Niger signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007 but has not yet ratified it. Likewise, it has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

[6] Including to articles 2 (d) and (f), 5 (a), 15 (4) and 16 (1) (c), (e) and (g).

12. In 2008 the Court of Justice of the Economic Community of West African States (ECOWAS)[7] held the Niger liable for administrative and judicial inaction that had resulted in the enslavement of Hadijatou Mani Koraou.[8] When she was 12 years old, Ms. Koraou had been sold to a 46-year-old man by a representative of her mother's owner, for the sum of 240,000 CFA francs. She was kept as the man's *wahaya*[9] for nine years before being liberated in 2005. She sought redress in the domestic courts, to no avail, but, with support from the Association Timidria and Anti-Slavery International, brought a claim to the ECOWAS Court. The Court found that she was entitled to reparations given that the Niger had failed to fulfil its international and regional human rights obligations prohibiting slavery. The Niger was ordered to pay her compensation in the amount of 10,000,000 CFA francs. Ms. Koraou also claimed that she had been a victim of discrimination based on gender and social origin; while the court found the argument valid, it attributed the discrimination to the former master, not to the State.

C. National legal, institutional and policy framework

Legislation

13. The 1999 Constitution was the first to explicitly prohibit slavery, and the 2010 Constitution reaffirmed the right of citizens to be free from slavery (art. 14) and enshrined equality before the law without distinction on grounds of sex and social, racial, ethnic or religious origin (art. 8).

14. However, it was only in 2003 that the Criminal Code (Act No. 61-027 of 15 July 1961) was amended by the introduction of penalties for slavery.[10] Article 270.1 contains a definition of slavery, in line with the Slavery Convention, as the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. The Code refers to "a person of servile status", drawing partially from the definitions of institutions and practices similar to slavery included in the Supplementary Convention on the Abolition of Slavery.

15. The Code distinguishes between slavery as a crime and offences related to slavery. The crime of slavery is defined as reducing others to slavery or inciting others to alienate someone's freedom or dignity or that of their dependents to reduce them to slavery (art. 270.2) and is punishable by imprisonment of between 10 and 30 years and a fine of between 1 million and 5 million CFA francs.[11] The same punishment applies where the master or his accomplice engages in sexual intercourse with a woman considered a slave or the wife of a man considered a slave or puts at the disposal of another person a woman considered a slave for the purpose of sexual intercourse.

16. The offence of slavery attracts a lesser penalty[12] and is defined under article 270.3 as any violation of the physical or moral integrity of a person because of his or her servile status, any degrading, inhuman or humiliating treatment of such a person; any act, on the part of a master, of receiving the fruits and revenue from the prostitution of a woman of servile status or from the labour of any person of servile status; the extortion of money from and blackmailing of a person of servile status; any act by a master of receiving a tribute

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[7] The Niger is a member of ECOWAS and the African Union.

[8] See *Koraou* v. *The Republic of Niger*, Judgement No. ECW/CCJ/JUD/06/08 of 27 October 2008.

[9] See sect. V.

[10] See Act No. 2003-025 of 13 June, book II, part III, chap. VI, sect. II bis.

[11] The same penalty applies for complicity and attempt.

[12] From 5 to less than 10 years of imprisonment and a fine of 500,000 to 1 million CFA francs (art. 270.4).

from a person because of the right of ownership exercised over that person; and the kidnapping of so-called slave children in order to put them in servitude.

17. A key provision giving effect to access to justice for victims of slavery is article 270.5 of the Criminal Code, in accordance with which locus standi can be granted for any association duly registered at least one year before the occurrence of the acts concerned and mandated by its statutes to fight against slavery or similar practices. Such associations are authorized to bring civil action to obtain compensation for damages caused. This has resulted in the development of anti-slavery jurisprudence, as NGOs have been able to represent claimants in court proceedings.

18. Another significant development is the passing of Ordinance No. 2010-86 of 16 December 2010, which is aimed at combating trafficking in persons in accordance with the Palermo Protocol and provides for penalties of 5 to 10 years of imprisonment and a fine of between 500,000 and 5 million CFA francs (art. 10). While slavery and certain institutions and practices similar to slavery are referred to in the Ordinance (debt bondage, serfdom and wife inheritance), they are covered only in relation to human trafficking.

19. The Niger has also amended its Labour Code (by Act No. 2012-45 of 25 September 2012) to provide further legal protection from contemporary forms of slavery. Article 4 prohibits forced or compulsory labour, rendering it punishable by a fine of 500,000 to 2 million CFA francs and/or imprisonment of two to five years (see art. 337 of the Code). In relation to labour rights, article 5 prohibits any discrimination based on, inter alia, sex, age, national origin, race, religion, colour, political or religious opinion, social origin or disability.

20. The Labour Code also prohibits the worst forms of child labour, defines them in line with ILO Convention No. 182 (art. 107) and sets the minimum age for work, except in the case of derogation granted by decree, at 14 (art. 106). However, Decree No. 67-126/MFP/T of 7 September 1967 allows for children from the age of 16 to be employed in certain types of hazardous work, which is in conflict with international standards permitting hazardous work only from the age of 18. The Labour Code provides for severe penalties for violations of the prohibition of the worst forms of child labour.[13]

Institutions

21. The National Human Rights Commission was established by Law No. 2012-44 of 24 August 2012. The Commission is mandated to address slavery and has investigated slavery-related complaints.

22. The National Commission for the Coordination of the Fight against Trafficking in Persons and the National Agency for Combating Trafficking in Persons, both under the authority of the Minister of Justice, and a special compensation fund for victims to be established by decree, were created by Ordinance No. 2010-86.

23. The national coordination commission includes representatives of ministries, civil society organizations, the National Human Rights Commission, traditional chiefs, the Bar and the Chamber of Notaries, and is tasked with elaborating policies and programmes related to the prevention of trafficking of persons.[14] It created the National Anti-Trafficking Action Plan (2014–2018) and conducted an exercise in an attempt to prioritize its efforts to eradicate contemporary forms of slavery using two criteria: negative impact on human rights and the visibility of the phenomenon. That resulted in the following priority focus

[13] Fine of 5 million to 10 million CFA francs and/or imprisonment of two to five years (art. 343).

[14] See Decree No. 2012-082/PRN/MJ of 21 March 2012.

areas: exploitative begging, the practice of *wahaya*, domestic servitude, exploitation of prostitution, traditional slavery, child forced labour, forced marriage, trafficking in migrants and trafficking in babies.

24. The National Agency for Combating Trafficking in Persons serves as the secretariat of the national coordination commission and is tasked with delivering and implementing the action plan and conducting awareness-raising campaigns.[15] The adoption of the decree on the establishment of the compensation fund that is to be managed by the Agency is pending owing to, among other things, the lack of funding.

25. The labour inspectorate, under the Ministry of Employment, Labour and Social Protection, plays a key role in enforcing the Labour Code. The Special Rapporteur was informed that the Ministry was in the process of adopting administrative regulations to increase the powers and resources of the inspectorate beyond the current eight regional inspectorates. The enhancement of capacities is especially relevant in terms of inspections in the informal sector, where inspectors could intervene but a lack of resources prevent them from doing so.

26. The Central Service for the Protection of Juveniles and Women was established in the national police (by Order No. 0045MI/S/D/AR/DGPN of 28 January 2011) and has a double mandate of protection and enforcement relating to Ordinance No. 2010-86.

27. The creation of a public administrative body, the National Agency for Legal and Judicial Assistance,[16] to provide legal assistance for certain categories of vulnerable persons is important for increasing access to justice for victims of contemporary forms of slavery.

Policies and programmes

28. The multi-stakeholder National Committee to Combat the Vestiges of Forced Labour and Discrimination, formed under the Ministry of Labour in 2006 (by Order No. 0933/MFP/T), drafted in 2007 a five-year national action plan on combating forced labour and discrimination. However, the National Committee is no longer operational owing to a lack of resources, and the action plan, which was structured around three major areas, namely, reinforcement of the institutional framework, awareness-raising and the prevention of and fight against poverty, has not been implemented.

29. The National Anti-Trafficking Action Plan (2014–2018), adopted in July 2014, contains six strategic priorities: improving the judicial and institutional framework; strengthening policies and programmes for the prevention of human trafficking; promoting assistance and support for victims; strengthening law enforcement; strengthening cooperation and partnerships; and ensuring follow-up and evaluation. The Special Rapporteur was informed that the Plan was meant also to address traditional slavery. She wishes to note, however, that the modalities are not clearly defined and the Plan refers to slavery and slavery-like practices only when they are linked to human trafficking.

30. The National Action Plan to Combat the Worst Forms of Child Labour (2010–2015), which was reviewed and validated by ILO, was pending adoption at the time of the Special Rapporteur's visit. She learned about a lack of local ownership of the Plan, which had been drafted some time ago and had not been reviewed since.

31. The ILO Decent Work Country Programme for the Niger (2012–2015) has as one of its priority outcomes the ratification and effective application of international standards

[15] See Decree No. 2012-083/PRN/MJ of 21 March 2012.

[16] See Law No. 2011-42 of 14 December 2011.

concerning child labour, the strategy for which includes reinforcement of capacities of key stakeholders and the formulation of a national action plan.

32. The Niger has adopted a national action plan (2012–2015) for the implementation of the recommendations accepted during its first universal periodic review. It is divided into eight strategic thematic areas, including one on slavery and related practices. The follow-up to the action plan is coordinated by an interministerial committee under the supervision of the Minister of Justice.

IV. Descent-based slavery

33. Almost all of the interlocutors with whom the Special Rapporteur met said that slavery continued to exist in some ethnic communities in the Niger, where people were born into slavery, resulting in generations being owned by, and at the entire disposal of, their masters. It was, however, repeated on several occasions that the prevalence of slavery was difficult to estimate, since it was hidden and was practiced in closed family circles.

34. The Nigerien population of about 17.8 million[17] consists of eight major ethnolinguistic groups: Hausa, living mainly in the south of the country; Djerma-Songhai, predominantly in the south-west; Kanuri, Arabs and Toubou in the south-east and north-east; Tuareg in the north; Gourmantché in the west; and Fulani (Peul) throughout the territory.

35. There have been several attempts to determine the number of slaves in the Niger. The author of a study conducted in 2002 initially estimated their number at 870,363 but then, for methodological reasons, suggested the total was closer to 46,382.[18] An estimate from 2004 mentions 8,885 slaves, belonging primarily to Tuareg, Toubou and Fulani (Peul) groupings; 87 per cent were in rural areas, with a large majority living in the nomadic parts of the Niger.[19] The Special Rapporteur was also informed about a study conducted in 2008 by the National Committee on Human Rights and Fundamental Freedoms, the predecessor of the National Human Rights Commission, in which the Committee concluded that neither forced labour nor slavery existed in the Niger.[20]

36. Determining the prevalence of slavery in the Niger would require comprehensive research. However, the Special Rapporteur learned from her extensive consultations with various stakeholders that, despite being legally abolished, descent-based slavery continues to exist in Tuareg, Fulani (Peul), Toubou and Arab communities. Those societies are very hierarchical and dominated by powerful traditional chiefs, and the number of slaves still appears to determine the social status and the power of the masters.[21] The Tuareg community is considered the most highly socially stratified of the communities, its structure resembling that of the caste system, with the slaves at the bottom.

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[17] See http://data.worldbank.org/country/niger.

[18] Abdelkader, "Slavery in Niger", p. 88.

[19] The highest percentage was recorded in Tahoua, followed by Diffa, Tillabéry, Zinder, Maradi, Agadez and Dosso. See Moustapha Kadi Oumani, "Un tabou brisé: l'esclavage en Afrique – le cas du Niger" (Paris, L'Harmattan, 2005), pp. 219–225.

[20] In another study, the National Statistics Institute and ILO estimated that more than 59,000 adults were involved in forced labour, for the most part in domestic work (48.2 per cent) and in agriculture or stockbreeding (23.6 per cent). See National Statistics Institute and ILO, "Enquête nationale sur le travail des enfants au Niger (2009) – Volet : Travail forcé des adultes et des enfants (Rapport d'analyse)" (Niamey, 2011), p. 8.

[21] Sékou and Abdoulkarimou, "The legacy of slavery", pp. 78–79.

37. In those communities, slaves still live with their masters. They are at the entire disposal of the master and his family; in exchange, they are fed and clothed. They are often exposed to violence and treated as commodities — they can be sold, loaned or offered as a gift in marriage. Slaves are required to work long hours, mainly in agriculture, domestic work and cattle rearing, and are not paid. Children born to slaves inherit the slave status. They belong to their master, who decides their fate, including regarding schooling, and can even separate them from their parents. Slaves cannot receive an inheritance; when a slave dies, his or her property, albeit limited, belongs to the master.

38. That situation, as described to the Special Rapporteur by her interlocutors, is in line with slavery as defined in the Slavery Convention: the person is deprived of all human rights and is under the complete control of the master. A stark indicator of the continuation of slavery in the Niger is also the evidence presented in the ECOWAS Court case regarding the existence of certificates of liberation dated as recently as 2005.

39. The Special Rapporteur's attention was drawn to the predominant situation in the Niger today: that of former slaves and descendants of former slaves who do not live with their masters but remain tied to them and face social exclusion and violations of their human rights, including widespread descent-based discrimination.[22] That is referred to as "passive slavery" in the Niger and exists especially among sedentary groups, such as Djerma-Songhai.

40. The Special Rapporteur was informed of examples of such discrimination against former slaves and their descendants, including prohibitions preventing them from leading prayers, and obstacles to their active political participation, decision-making and ownership of land. Marriage between a person of slave ancestry and someone outside the community is still almost inexistent, and former slaves and their descendants are denied equal economic opportunities, have limited access to basic social services and are, in some cases, denied the right to education. The Special Rapporteur heard of cases where they were confined to a specific part of a village, and mention was even made of separate cemeteries.

41. In the Niger, the modern structures of local government coexist with the traditional structures administered by traditional chiefs.[23] The titles in the traditional communities are transferred hereditarily, which means that those of the higher social class continue to exercise authority, and former slaves and their descendants are excluded from decision-making processes that affect them.

42. Discrimination in land ownership also occurs. Given that the land was traditionally owned by the master and that land property rights are transferred through inheritance, former slaves and their descendants cannot own land. Owing to the lack of any alternative livelihood options, they are obliged to work on the land belonging to the former master and to provide a part of the harvest in return (as a tithe). The result is a situation of serfdom as defined in article 1 (b) of the Supplementary Convention.[24]

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[22] A similar situation affects those belonging to castes linked to certain professions, for example, blacksmiths, butchers and traditional musicians, who are also at the bottom of the highly stratified caste-based society. Discrimination on the grounds of descent, that is, against members of communities based on forms of social stratification such as caste and analogous systems of inherited status violates the International Convention on the Elimination of All Forms of Racial Discrimination. See general recommendation No. 29 (2002) on article 1 (1) of the Convention (Descent).

[23] Order No. 93-28 of 30 March 1993 on the status of traditional authority in the Niger.

[24] Article 1 (b) reads as follows: Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.

43. While pasture land is not privately owned and access to it is free, it is regulated by the individual ownership of watering points, especially wells, which leads to de facto ownership of the pasture by the well owner. Former slaves and their descendants do not have the means to sink wells and generally accept their status in order to have access to water.[25]

44. Civil law does not deny former slaves and their descendants land ownership. However, in Nigerien law, payment of tithes is viewed as an indicator that the land is owned by the party receiving the tithes, which are considered as rental payments. Thus, cases brought on behalf of former slaves or their descendants to claim ownership of land are almost impossible to win in the courts. Also, the role of traditional chiefs prevails in certain customary law disputes relating to the use of agricultural and pastoral lands.[26]

45. The Special Rapporteur learned about several such situations, including one in the village of Gountou Koira, Tillabéry region, which she visited. In that particular case, the court had ruled that by accepting the payment of tithes to the traditional chiefs, the villagers — descendants of slaves — had accepted their situation as serfs and had waived their right to claim ownership of the land.[27] They are currently living at the mercy of the land owners, who have allowed them to continue to cultivate the land upon payment of a tithe; the level of poverty in the village is particularly distressing.

46. While land owners in the case of Gountou Koira would not be willing to sell their land if it was going to be given to those of slave descent, in Tajaé, Tahoua region, the NGO Réagir dans le monde (RDM Tanafili) was successful in purchasing land from the former masters. The land was given to the descendants of slaves, who were also provided with assistance for their socioeconomic empowerment.

47. The Special Rapporteur heard of cases where people of slave descent had achieved economic and political success in urban areas. They were, however, still regarded as a part of the slave caste by the communities they originated from, which points to the inability to alter the inherited status. The Special Rapporteur was also informed of a case of a businessperson of slave descent who wanted to buy a piece of land in the region of Tillabéry, but the deal fell through when the land owner discovered the person's ancestry.

V. *Wahaya* practice

48. The *wahaya*[28] practice involves the purchase of one or more girls, usually of slave descent, under the guise of a fifth wife.

49. The ECOWAS Court, in its 2008 judgement, condemned *wahaya* as a form of slavery. The Court described it as a practice that consisted of acquiring a young girl, generally a slave, to work as a servant and as a concubine. According to the Court, in general, the *sadaka* does housework and is at the master's service. The master can, at any time, day or night, have sexual relations with her.[29] A *wahaya* is often subjected to

[25] Abdelkader, "Slavery in Niger", p. 72.

[26] Article 15 of Ordinance No. 93-28, as amended by Law No. 2008-22 of 23 June 2008, stipulates that "the traditional chief shall have the power of conciliation of parties in customary, civil and commercial matters. He shall rule according to custom on the use of agricultural and pastoral lands by families or individuals."

[27] The villagers were supported in their case by Timidria.

[28] Plural: *wahayu*; also called *sadaka*.

[29] *Koraou* v. *The Republic of Niger*. The Special Rapporteur met with Ms. Koraou, who explained that the charges of bigamy brought against her by her former master before domestic courts had been

additional forms of abuse and violence from the wives of the household, who see her as a competitor, especially if she has children with the master. Children born as a result of sexual relations with the master are considered legitimate and hence can inherit his property.[30]

50. The Special Rapporteur heard various views on the prevalence of the *wahaya* practice, ranging from the view that it no longer existed, to the more common belief that its existence was as widespread as before, but that it was practised covertly and portrayed as providing legitimate employment in domestic work, or even that *wahayu* are sometimes falsely claimed to be relatives.

51. Most *wahayu* come from the Tahoua region, are of slave descent and are sold when they are very young by Tuaregs, mainly to wealthy Hausa individuals, including some from Nigeria. A *wahaya* is usually sold by her master; in rare cases, she is sold by her own family. The Special Rapporteur learned that among 165 *wahayu* who had been interviewed for research purposes, 129 were of slave descent and more than 80 per cent had been sold before they had reached the age of 15.[31]

52. The Special Rapporteur obtained testimony from former *wahayu* and their descendants who currently reside in the village of Zongo Ablo, Tahoua region. The women displayed the heavy brass anklets they had been forced to wear to prevent them from escaping. They had had to leave their children when they fled, and some had not been able to trace them. Many former *wahayu* bear scars from the injuries inflicted by their former masters, and all of those who spoke with the Special Rapporteur reported having suffered severe physical hardship and all forms of abuse. With support from Timidria, many had acquired skills, such as mat weaving, to enable them to earn an income and provide for their families, although their earnings were insufficient.

53. Prosecutions for engaging in *wahaya* practice in the Niger have been rare. The Special Rapporteur was informed of only one conviction for *wahaya* as a crime of slavery: on 26 May 2014 the Assize Court of Birni N'Konni sentenced a 63-year-old perpetrator to four years in prison and a fine of 250,000 CFA francs. The court took account of the marriage between the parties subsequent to the initiation of the charges as a mitigating factor, as well as the victim's failure to file a civil action. It also reduced the accused's sentence for time served awaiting trial, a decision that was perceived as condoning the crime.

VI. Other issues of concern

A. Child marriage

54. The Niger has the highest proportion of child marriage in the world: about 75 per cent of girls under 18 are married. Child marriage is more frequent in southern regions and among girls who are the least educated, poorest and living in rural areas.[32]

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formally withdrawn and all legal proceedings in domestic courts had been terminated.

[30] Galy Kadir Abdelkader and Moussa Zangaou, "Wahaya: domestic and sexual slavery in Niger", (Anti-Slavery International and Timidria), p. 7.

[31] Ibid., pp. 5–6.

[32] The percentage of women aged 20 to 24 who were married by the age of 18 is highest in the regions of Diffa (89 per cent), Zinder (88 per cent), Maradi (87 per cent) and Tahoua (83 per cent), followed by Dosso (74 per cent), Tillabéry (69 per cent), Agadez (48 per cent) and Niamey (28 per cent). See United Nations Population Fund, "Child marriage profiles: Niger", available from www.devinfo.info/mdg5b/profiles/files/profiles/4/Child_Marriage_Country_Profile_AFRNER_Niger.pdf.

55. The inequality in the minimum legal age for marriage in the Civil Code, which is set at 15 for girls and at 18 for boys (art. 144), constitutes direct discrimination against girls. While article 146 of the Civil Code stipulates that consent is essential for a marriage, article 148 permits the marriage of a girl with parental consent, effectively legalizing child marriage. For marriages entered into under customary law, there is no consent requirement nor is there any legal marriageable age.

56. In addition to having an adverse impact on the enjoyment by girls and women of their human rights, child marriage constitutes forced marriage, since the child is not in a position to provide informed consent. The Supplementary Convention defines three forms of servile marriage as an institution or practice similar to slavery (art. 1 (c)), and these marriages would in certain circumstances even meet the international legal definition of slavery. Other slavery-like practices linked to servile marriage are domestic servitude and sexual slavery (see A/HRC/21/41 and Corr.1, paras. 13, 14 and 17).[33]

57. Government representatives whom the Special Rapporteur met were aware of the high prevalence of child marriage and indicated that legislative reforms had been proposed to end it, including through a draft law to protect girls of school age. Owing to resistance based on customs and religious and traditional beliefs, no progress has been made on adopting that legislation or addressing the issue as a human rights violation.

58. The Ministry of Population, Advancement of Women and Protection of Children has conducted advocacy and awareness-raising programmes (for example, "schools for husbands"), including on the risks that are consequent upon child marriage, such as high maternal and infant morbidity and mortality rates and negative effects on sexual and reproductive health. It conducted a pilot programme in the Tillabéry region, which has reportedly had positive results, to raise awareness in the community about the negative effects of child marriage. The Ministry was also making progress in enlisting the support of some traditional chiefs and religious leaders in denouncing child and forced marriage.

B. Worst forms of child labour

59. The Special Rapporteur was informed that, although progress had been made in addressing the phenomenon, the prevalence of child labour in the Niger was still high, and children were engaged in the worst forms of child labour, particularly in agriculture and domestic work and to some extent in artisanal gold mines and quarries and salt and gypsum mines.

60. According to the 2009 national survey on child labour in the Niger, an estimated 50.4 per cent of children between the ages of 5 and 17 were economically active, with child labour more significant in rural areas and among girls. Furthermore, 83.4 per cent of those economically active children were engaged in forms of child labour prohibited by ILO Convention No. 182. Of those, 61.8 per cent performed their work under hazardous conditions.[34]

61. Among the worst forms of child labour, one of the most prevalent in the Niger is forced begging. It arises where children, mainly boys, known as *talibés*, are sent by families to religious teachers (marabouts) for the purpose of Koranic instruction. Marabouts receive no financial contribution from the families, and *talibés* are required to beg in the streets for alms to learn humility as part of their education. That, however, has in some cases evolved

[33] See also Anti-Slavery International, "Out of the shadows: child marriage and slavery" (2013).

[34] National Statistics Institute and ILO, *Rapport de l'Enquête nationale sur le travail des enfants au Niger de 2009* (Niamey, 2011), p. xi.

into a practice of forced begging wherein children are required to beg for money for long hours, receive very little or no education, and are often beaten, not properly fed and abused for raising insufficient money. Moreover, the Special Rapporteur also received reports of marabouts "renting" *talibés* to work in gold mines. Some *talibés* flee the situation and end up living on the street, which increases their exposure to further human rights violations.

62. The Government has acknowledged that the number of street children in the urban areas, particularly in Niamey, has reached alarming proportions. According to a report published in 2011 by a collective of human rights organizations (Collectif des organisations de défense des droits de l'homme et de la démocratie), there were more than 11,000 street children in the Niger.[35] To tackle the situation, the National Committee to Combat the Phenomenon of Street Children was established under the Ministry of Population, Advancement of Women and Protection of Children, by Order No. 09/MPF/PE of 30 April 2007, but the Committee is no longer operational.

63. In addition to violating ILO standards, forced child begging, like other worst forms of child labour, can violate the prohibition on delivering a child for exploitation set out in the 1956 Supplementary Convention, when there is an element of intent on the part of parents or guardians,[36] and can also amount to slavery. The economic exploitation of children is also explicitly prohibited by the Convention on the Rights of the Child (art. 32 (1)) and forced child begging also violates a number of other rights under that Convention.

64. The Special Rapporteur was not informed of any convictions in relation to the worst forms of child labour, despite penalties provided for under the Labour Code. Similarly, no marabout has been convicted for forcing children to beg, despite the clear definition of forced child begging as a crime under article 181 of the Criminal Code.[37]

65. The Ministry of Employment, Labour and Social Protection informed the Special Rapporteur that over a period of 12 years 15,000 children had been removed from the worst forms of child labour and rehabilitated with the support of NGOs. The projects under the International Programme on the Elimination of Child Labour of ILO have helped to extricate children from the artisanal gold mining industry and enrol them in newly built schools, for example in Mbanga, in the Tillabéry region, which the Special Rapporteur visited with the support of the Association pour la lutte contre le travail des enfants au Niger (ALTEN).

66. The Special Rapporteur learned about the positive results of a government pilot programme in Diffa region where *talibés* were learning the Koran in the community rather than being removed from it. Some efforts have been made to formalize Koranic teaching, and the National Anti-Trafficking Action Plan envisages measures to further reinforce the regulation of Koranic schools. The Special Rapporteur was encouraged to hear that the strategic plan of the National Human Rights Commission (2014–2017) provides for a study that will hopefully shed more light on the *talibé* phenomenon.

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[35] Niger, "Combined periodic report of the Republic of Niger, 2003–2014", submitted to the African Commission on Human and Peoples' Rights, para. 388. Available from www.achpr.org/files/sessions/16th-eo/state-reports/2-2003-2014/periodic_report_2003_2014_eng.pdf.

[36] Article 1 (d): Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

[37] Article 181: Parents of children under eighteen years who habitually engage in begging, all those who have invited children to beg or who knowingly profited from this, shall be punished by imprisonment of six months to a year.

C. Domestic servitude

67. The above-mentioned national survey on child labour in the Niger showed that most economically active children are engaged in domestic work (58.2 per cent), with the percentage even higher for children between the ages of 5 and 11 (65.5 per cent).[38] According to information obtained by the Special Rapporteur, those employed in domestic work in the Niger are mainly girls from rural areas within the country who go to cities to escape poverty, but girls from neighbouring countries (Benin, Mali and Togo) are also involved.

68. The Special Rapporteur is concerned about the high number of children in domestic work, especially since its specificities make those employed in the sector particularly vulnerable to economic exploitation, abuse and, in extreme cases, subjugation to domestic servitude and domestic slavery (see A/HRC/15/20, para. 16).

69. The findings of the Special Rapporteur in the Niger confirm this. Domestic workers are often subjected to physical, verbal and sexual abuse and discrimination, are paid very little if at all (sometimes under the pretext that the money would be sent to their families directly), work long days, can be physically and socially isolated and have no weekly rest period or vacations. Sometimes they are held in debt bondage by their recruiters and/or employers. Women and girls, who predominate in this sector, suffer additional gender-based violence.

70. The Special Rapporteur is concerned that domestic work in the Niger is not regulated by legislation. The Government has, however, informed the Special Rapporteur about the steps taken to ratify the ILO Domestic Workers Convention, 2011 (No. 189).

VII. Root causes of slavery

A. Poverty and lack of alternative livelihoods

71. The Niger is one of the world's poorest countries and has consistently ranked low on the human development index of the United Nations Development Programme — in 2014 it ranked last among 187 countries. In 2011, 48.2 per cent of the population lived in poverty, with women representing three out of four poor people.[39]

72. Endemic poverty and food insecurity, linked to the practice of subsistence agriculture and a strong dependency on environmental influences, are important push factors for contemporary forms of slavery. They also make those subjected to slavery and slavery-like practices more likely to accept their fates because of a lack of economic alternatives and means of survival, hence perpetuating slavery.

73. The Special Rapporteur learned about a large number of refugees in the Niger, mainly Malians, Nigerians and returnees,[40] and is concerned about their specific vulnerability to contemporary forms of slavery.

[38] National Statistics Institute and ILO, *Rapport de L'Enquête nationale*, pp. xi and 29.

[39] National Statistics Institute, "Le Niger en chiffres 2014". Available from www.stat-niger.org/statistique/file/Affiches_Depliants/Nigerenchiffres2014def.pdf.

[40] Citizens of the Niger who were living in Nigeria and have fled the conflict in north-eastern Nigeria. See Office of the United Nations High Commissioner for Refugees, "2015 UNHCR country operations profile – Niger". Available from www.unhcr.org/pages/49e484ce6.html.

74. The Special Rapporteur also heard reports of people who chose to be known as former slaves because they could claim a portion of food and gifts intended for slaves at wedding and christening ceremonies in the former master's household. This reflects the mindset of subjugation and arises from the destruction of human dignity resulting from the long legacy of slavery in the Niger. At the same time, what seems to be endorsement of relationships of patronage by people of slave descent themselves indicates a highly stratified society and disempowerment arising from the lack of alternative livelihoods.

75. In order to eradicate poverty, improve the living conditions of the population and promote a discrimination-free society, the Government adopted the Economic and Social Development Plan for 2012–2015. The Special Rapporteur notes the relevance of the Plan for the socioeconomic empowerment of vulnerable populations and remains interested in the evaluation of its impact, especially in relation to the issues connected to her mandate.

B. Customary law

76. Pursuant to article 171 of the Constitution, ratified international treaties take precedence over domestic legislation; however, in the country's legal regime of dualism, customary law tends to be applied and prevail over civil law. The Government has acknowledged that, with more people inclined toward customary law, since it is believed to better reflect the sociocultural realities of the country, the principle of equality among citizens recognized by the Constitution is being diluted.[41]

77. Customary law perpetuates discrimination and has resulted in former slaves and descendants of former slaves being denied the full and equal enjoyment of their human rights in violation of international law and domestic civil law. Especially negative is the impact of customary law on the human rights of women and girls, addressed further below.

78. Through Act No. 62-11 of 16 March 1962 (the Courts Act) and Law No. 2004-50 of 22 July 2004, the Government restricted the scope of the civil law by giving precedence to customary law in most personal status matters, for example those concerning marriage, divorce, direct descent, inheritance, settlement of assets and wills, and in relation to property ownership (CEDAW/C/NER/1-2). It is important to note, however, that the application of custom is supposed to be subordinate to respect for ratified international treaties, legislative provisions or fundamental rules relating to public order or the freedom of individuals.[42]

C. Gender-based discrimination and inequality

79. In addition to the existence of descent-based discrimination, the Niger continues to struggle with deep-rooted adverse cultural norms, customs and traditions that discriminate against women and girls and constitute serious obstacles to their full and free enjoyment of human rights (see CEDAW/C/NER/CO/2, para. 17).

80. Besides being most affected by poverty, women continue to be underrepresented in decision-making,[43] have limited access to the labour market and basic services, and are

[41] Niger, "Combined periodic report", para. 369.

[42] Article 63 of Law No. 2004-5.

[43] For example, access to the chieftaincy is possible only for men (Order No. 93-28, art. 7). To improve women's participation in political life, the Niger adopted the Quota Act (Law No. 2000-008 of 7 June 2000), which establishes that a minimum of 10 per cent of elected posts and 25 per cent of appointed posts are assigned to each gender. With the revision of the law, the percentage of elected posts was

disadvantaged in terms of access to land ownership and inheritance. Only 18.2 per cent of women are literate, compared with 42.8 per cent of men,[44] and the Niger dropped from 151st to 187th place in the gender inequality index in 2014.[45]

81. Notwithstanding the constitutionally guaranteed equality before the law (art. 10), in reality customary law that discriminates against women prevails. The authorities have been trying to address the persisting gender-based discrimination; in 1976 they drafted a Family Code that is still pending adoption owing to the resistance of some religious leaders and in 2008 a National Gender Policy was adopted.

82. Gender-based discrimination and inequality render women and girls increasingly vulnerable to contemporary forms of slavery, including child and forced marriage. Female slaves are exposed to additional hardship, including sexual violence by the masters, and girls of slave descent are the main victims of the *wahaya* practice.

D. Weak child protection system and unequal access to education

83. Children represent more than half of the population of the Niger, and the country has the highest birth and fertility rates in the world.[46] In that context, widespread poverty, the lack of a strong child protection system, limited birth registration and access to basic social services, and the strong influence of customary law all contribute to violations of children's rights and the increased vulnerability of children to contemporary forms of slavery.

84. In the context of the Government's commitment to addressing the weaknesses in the child protection system, the Special Rapporteur was informed about its systemic approach to unifying all actions concerning children. She welcomes the adoption in 2013 of a Government policy on child protection, but notes the challenges to setting up the national-level coordination mechanism. The Government is also developing a national programme on child protection that would restructure social services to ensure a presence in all 63 departments, but is faced with a lack of human and financial resources. The children's code, by which the Government intends to bring legislation into line with the Convention on the Rights of the Child, is still pending adoption.

85. The Special Rapporteur notes the establishment, by the Ministry of Justice and the Ministry of Population, Advancement of Women and Protection of Children, of 34 centres, known as SEJUPs,[47] meant to provide support to vulnerable children. Although SEJUPs are a commendable initiative, their number and human resources, including in terms of specialized skills, seem to be insufficient and they are said to be more adapted to children in conflict with the law.[48]

86. While the Special Rapporteur was informed of campaigns to improve birth registration, rates remain low, at 31.8 per cent for the 2005–2012 period, with a large discrepancy between rural and urban areas,[49] falling short of the obligations set out in article 7 (1) of the Convention on the Rights of the Child.

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raised to 15.

[44] Figures for 2011 (National Statistics Institute, "Le Niger en chiffres").

[45] See http://hdr.undp.org/en/content/table-4-gender-inequality-index.

[46] About 50 births/1,000 people (2013, see http://data.worldbank.org/indicator/SP.DYN.CBRT.IN) and 7.6 children per woman (2013, see http://data.worldbank.org/indicator/SP.DYN.TFRT.IN/countries).

[47] Services éducatifs, judiciaires, et préventifs.

[48] Niger and the United Nations Children's Fund (UNICEF) Niger, "Analyse de la situation des enfants et des femmes du Niger selon une approche basée sur l'équité et les droits humains" (2013), p. 74.

[49] About 70.7 per cent in urban areas and 24.7 per cent in rural areas (UNICEF, "At a glance: Niger").

87. In the Niger, education is recognized as a right to be guaranteed by the State to children between the ages of 4 and 18, without distinction as to age, sex, social, racial and ethnic origin or religious belief.[50] Six years of primary education are tuition-free.

88. The Government of the Niger has taken important measures to ensure the right to education, including the adoption of the 10-Year Education Development Programme 2003–2013 and the Sectoral Education and Training Programme 2014–2024, which are designed, inter alia, to promote the schooling of young girls at the primary level and income-generating activities for parents.

89. Despite those initiatives, investments in school infrastructure and teacher training, the reduction of school fees and the establishment of canteens in alternative rural, previously called nomadic, schools, access to education remains unequal and the education quality in public schools continues to be poor.

90. Girls, children from rural areas in the regions of Diffa, Zinder, Tillabéry and Tahoua and children from poor families are most disadvantaged in terms of access to education.[51] Girls in particular are less likely to go to school and more likely to drop out,[52] owing to traditional beliefs and customs. It was brought to the Special Rapporteur's attention that the access of rural children, especially girls, to secondary education is especially problematic because of the long distances and associated costs (for example of accommodation).

91. Education plays a key role in emancipating former slaves and their descendants, combating their social exclusion, marginalization and discrimination and ending slavery and slavery-like practices. Low education levels and high levels of illiteracy perpetuate the cycle of poverty and contribute to the continuation of slavery and related practices.

92. Acknowledging that education is an important factor in breaking the cycle of slavery, Timidria and Anti-Slavery International have, since 2007, been implementing a project consisting of six community schools aimed at securing schooling for children in villages of people of slave descent in Tchintabaraden, in the Tahoua region, who previously had limited or no possibility to attend schools owing to their social origin. The project, in which the organizations combine education with public awareness-raising activities and socioeconomic empowerment, has helped to combat child marriage and child labour and to free former slaves and descendants of slaves from their ties to their former masters.

E. Weak law enforcement

93. Despite the existing legislative framework criminalizing slavery, the number of prosecutions under articles 270.1 to 270.5 of the Criminal Code has been very limited. In the absence of centralized data and statistics on convictions, the Special Rapporteur was not able to extract such information, although her interlocutors indicated that there had been very few cases. Timidria reported on eight concluded or pending trials for the crime or offence of slavery.

Available from www.unicef.org/infobycountry/niger_statistics.html).

[50] Law No. 98-12 of 1 June 1998 on the Niger Education System Policy, as amended and supplemented by Law No. 2007-24 of 3 July 2007.

[51] Niger and UNICEF, "Analyse", p. 12.

[52] For the school year 2012/13 there was 82 per cent overall enrolment in primary schools (74.7 per cent for girls and 89.5 per cent for boys), with much lower enrolment rates at the level of the first cycle of secondary education (21.2 per cent overall, 17.9 per cent for girls and 24.8 per cent for boys) and the second cycle of secondary education (5.5 per cent overall, 3.5 per cent for girls and 7.3 per cent for boys). See National Statistics Institute, "Le Niger en chiffres".

94. In some instances, the prosecutor alleged that a violation of article 102 of the Criminal Code, declaring any act of racial or ethnic discrimination punishable by law, had occurred along with the crime or offence of slavery. In other cases, such as that of Ms. Koraou, trials have been delayed and the courts have applied customary rather than civil law.

95. While a comprehensive analysis is needed of the reasons for the limited number of prosecutions, the Special Rapporteur notes that the prosecutorial and judicial authorities and law enforcement officials seem to sometimes lack the necessary expertise on the existing anti-slavery legislation. There also appears to be reluctance on the part of victims to report crimes of slavery, owing to, among other things, fear of retaliation or victimization; lack of awareness of their rights, including due to illiteracy; limited access to legal aid; lack of alternative livelihoods; inadequate victim support; and absence of trust in law enforcement.

VIII. Conclusion and recommendations

96. **The Special Rapporteur acknowledges the steps taken by the Government of the Niger to combat contemporary forms of slavery. In particular, the criminalization of slavery and establishment of substantial penalties for violations is a significant advance in the legal protection afforded to victims. The Special Rapporteur was encouraged by the constructive dialogue with the authorities throughout her visit and the clear political will that exists to eradicate slavery and the root causes perpetuating slavery and slavery-like practices.**

97. **In order to assist those efforts, the Special Rapporteur addresses the following recommendations to the Government, the international community and businesses, and is committed to continued engagement with regard to their follow-up, including in terms of a possible consultative meeting on the findings of her report.**

A. Recommendations to the Government

Streamlining and mainstreaming the efforts to eradicate slavery

98. **The Special Rapporteur notes that efforts to combat slavery and slavery-like practices could benefit from a more comprehensive approach that moves away from the existing fragmentation where various initiatives exist without sufficient coordination of activities. She recommends that the Government:**

(a) Conduct a comprehensive nationwide study on the prevalence of slavery and slavery-like practices, identifying the causes and consequences, the protection and assistance required by victims and possible reparations. This should be done in cooperation with, and with the support of, relevant national and international stakeholders, including NGOs working on slavery and the donor community;

(b) On the basis of the results of the study and regular collection and analysis of disaggregated statistical data on slavery, while duly respecting data protection and privacy, develop a national strategy and an action plan aimed at eradicating all forms of slavery, slavery-like practices and descent-based discrimination through a broad, inclusive and participatory approach including all actors working in the field. The activities in the action plan should also draw from the recommendations contained in the present report and relevant existing action plans, and the plan should contain express reference to clearly defined, realistic time frames, implementing partners and funding needs;

(c) Improve coordination among stakeholders working on the issues relevant for the mandate and streamline the anti-slavery activities by creating an adequately funded high-level multi-stakeholder coordination mechanism, ideally attached to the President's or the Prime Minister's Office, tasked with monitoring the implementation of the strategy and the action plan and their periodic review; enforcing the legislation, programmes, plans and policies aimed at eradicating slavery and tackling its root causes; and reflecting the specific situation of slaves, former slaves and their descendants in all relevant Government programmes and policies, including those addressing the root causes of slavery, in order to ensure the full enjoyment of their human rights;

(d) Conduct an assessment of whether the coordination, monitoring, enforcement and mainstreaming function could be executed by the National Commission for the Coordination of the Fight against Trafficking in Persons if the necessary legislative changes were made, including in terms of extending its mandate to include all forms of slavery and slavery-like practices.

Legislative amendments

99. In terms of strengthening the legislative framework, the Special Rapporteur urges the Government to focus on the following measures:

(a) Criminalize all slavery-like practices, including by incorporating into the Criminal Code the entirety of institutions and practices similar to slavery described in the Supplementary Convention;

(b) Amend article 102 of the Criminal Code by adding an explicit reference to the prohibition of descent-based discrimination in line with general recommendation No. 29 of the Committee on the Elimination of Racial Discrimination;

(c) Enact legislation on domestic work and penalties for violations of the rights of domestic workers, in line with the ILO Domestic Workers Convention, 2011 (No. 189), the ratification of which is strongly encouraged, and criminalize domestic servitude;

(d) Adopt the regulatory part of the Labour Code at the earliest;

(e) Withdraw all reservations to international human rights instruments and adopt the legislative changes necessary to address the persisting discrepancy between the national and international legal frameworks, including in relation to raising the minimum age for hazardous labour and minimum marriageable age for girls;

(f) Adopt the legislative amendments necessary to ensure that the operationalization and activities of the National Agency for Combating Trafficking in Persons at the regional, departmental and community levels benefit all victims of slavery and slavery-like practices.

Access to justice and law enforcement

100. In order to address the law enforcement challenges and the question of access to justice for victims of slavery and slavery-like practices, the Special Rapporteur recommends that the Government:

(a) Undertake a comprehensive analysis of the reasons for the limited number of prosecutions;

(b) Ensure effective access to justice for victims of slavery, slavery-like practices and former slaves by providing them with increased support to bring their cases forward, including high-quality and specialized free legal assistance and victim and witness support services;

(c) Expedite the passing of the decree establishing the special compensation fund for victims, guarantee its adequate resourcing and extend the pool of its beneficiaries to those trapped in all forms of slavery and slavery-like practices in order for them to be ensured the right of access to an effective remedy;

(d) Include modules on anti-slavery legislation in the curricula of judicial, prosecution and front-line officials, including police, gendarmerie, social workers and labour inspectors, using the already available compendium of relevant international, regional and national standards on slavery and slavery-like practices assembled by RDM Tanafili with the support of the Office of the United Nations High Commissioner for Human Rights;

(e) Provide for continued specialized training of law enforcement officials and prosecutorial and judicial authorities on the anti-slavery legislation, and issue orders to ensure proper detection and identification of victims, prompt and effective investigation and prosecution and punishment of perpetrators;

(f) Consider developing indicators for the existence of slavery and slavery-like practices to assist front-line officials in victim detection and identification, including on the specific vulnerabilities of children to contemporary forms of slavery, especially those in street situations;

(g) Guarantee that the international human rights norms and standards applicable in the Niger are always upheld by the judiciary;

(h) Establish a database of initiated, pending and concluded trials in slavery cases at the level of all courts and introduce a section on those in the chapter on justice in the Statistical Yearbook in order to facilitate the sharing of information and jurisprudence;

(i) Expedite the strengthening of the labour inspection system by extending its presence beyond the regional level and providing the labour inspectors with sufficient financial, human and material resources to be able to conduct inspections effectively, including in the informal sector and other sectors where allegations of forced labour and worst forms of child labour are prevalent;

(j) Collect statistics of the number of cases of forced labour and worst forms of child labour detected and investigated by labour inspectors and their follow-up in terms of referral to courts;

(k) Address as a matter of urgency the cases of forced child begging, including by prosecuting marabouts who exploit children in this manner and further regulating Koranic schools in order to prevent this from occurring.

Protection of victims' rights and empowerment of victims

101. The Special Rapporteur emphasizes that increased prosecution efforts should be accompanied by measures to prevent slavery and to protect and rehabilitate victims. In that regard, special attention should be placed on guaranteeing the rights of women and girls, above all those from the communities of former slaves and their descendants, who face multiple forms of discrimination. The Special Rapporteur notes the key role that national and international NGOs have played in terms of

empowering victims and urges the Government to continue to cooperate with them. She calls on the Niger to:

(a) Adopt a formal referral and support system for victims of slavery and slavery-like practices, including in terms of safe shelter, family reunification and medical, psychological and other assistance, in cooperation with NGOs that are currently the main providers of different forms of support;

(b) Supplement the national strategy and the action plan with legally enshrined policies and programmes designed to rehabilitate victims, former slaves and descendants of slaves through socioeconomic empowerment and alternative livelihoods support, including education, vocational skills training, literacy courses, access to capital (microcredit), tools and basic social services, and assistance with income-generating activities, always taking into account the specific needs of women and children;

(c) Take normative action to ensure the protection of the housing, land and property rights of former slaves and their descendants, which are essential for their empowerment, including by guaranteeing their equal access to cultivable land and easing their access to pasture land by sinking wells;

(d) Instruct magistrates that in land and property dispute cases the payment of tithes is considered as an indication of a slavery-like practice (serfdom) and not an indicator that the land is owned by the receiving party;

(e) Ensure equal access to high-quality free public education for all children of compulsory school age, including former slaves and those of slave descent, and particularly girls, by, inter alia, allocating sufficient budget for adequate school infrastructure, meals in schools and proper teacher training and by raising awareness among parents in areas with low school enrolment rates about the importance of education; in this regard, consider building on the positive results reaped through the project on community schools (see para. 92 above), including by replicating the model in other similar settings and integrating the existing community schools into the national school system, while ensuring the non-segregation of children of slave descent.

Awareness-raising

102. The Special Rapporteur emphasizes the need to address as a priority the deep-rooted discrimination against former slaves and their descendants and the customs and traditional and religious beliefs that discriminate against women and girls, and to continue raising awareness regarding the criminalization of slavery and slavery-like practices. To that end, the Special Rapporteur highlights the crucial role of:

(a) Sustainable nationwide awareness-raising campaigns on the criminalization of slavery and the legislation prohibiting contemporary forms of slavery, as well as the promotion and public availability of the latter in order for slavery and slavery-like practices to be prevented and denounced and for victims to be informed about their rights;

(b) Specialized seminars and training for NGOs, trade unions, traditional chiefs, religious leaders, representatives of local authorities and the media;

(c) Continued political leadership, including that of traditional chiefs and religious leaders, in denouncing slavery and slavery-like practices and promoting a culture of respect for human rights and the equality of women and men.

103. **The Special Rapporteur learned that Islam, the majority religion in the country, is often used to justify slavery and slavery-like practices. The religious leaders with whom the Special Rapporteur met acknowledged that Islam was indeed misinterpreted in that way, but emphasized that those practices were not supported in the Koran. In order to dispel the misperception of linkages between Islam and slavery, the Special Rapporteur calls for the relevant authorities to facilitate the elaboration and pronouncement of a fatwa by religious leaders, in collaboration with relevant stakeholders, declaring that slavery and slavery-like practices are forbidden under Islam.**

B. Recommendations to the international community

104. **The Special Rapporteur applauds the important role played by the international community in supporting the Government and other stakeholders in the Niger, including NGOs, in combating slavery and slavery-like practices. She emphasizes the need for this support to continue, including in terms of technical expertise, human rights awareness training and the funding of specific programmes and projects under the recommended action plan. She especially urges the international community to increase support for activities related to the protection and empowerment of victims, especially children, former slaves and persons of slave descent. She also strongly encourages the international community to mainstream anti-slavery efforts in its programmes.**

C. Recommendations to businesses

105. **Both local and international businesses operating in the Niger should respect internationally recognized human rights, at a minimum those set out in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work, undertake ongoing human rights due diligence and put in place processes to enable remediation for any negative human rights impact they cause or contribute to, in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola

Addendum

Mission to Belgium*

Summary

The present report contains the main findings of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, following her country visit to Belgium from 19 to 26 February 2015. Further to the analysis of the normative framework and the multidisciplinary and multi-level institutional mechanism to combat contemporary forms of slavery, the Special Rapporteur examines economic exploitation and forced labour, domestic servitude, forced child begging and forced marriage. She acknowledges the comprehensiveness of the Belgian legislative and institutional framework to address these issues and draws attention to the continued challenges of prevention, victim detection and identification and the right to an effective remedy. The report concludes with recommendations aimed at assisting the Government in addressing the remaining gaps as far as contemporary forms of slavery are concerned.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and French only.

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Annex

[English and French only]

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, on her mission to Belgium (19–26 February 2015)

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I. Introduction

1. In accordance with Human Rights Council resolution 24/3, and at the invitation of the Government of Belgium, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, conducted an official visit to Belgium from 19 to 26 February 2015.

2. During her visit, the Special Rapporteur met with the Federal Ministers of Foreign Affairs, of Justice and of Employment, Economy and Consumer Affairs. She also met with the State Secretaries for the Fight against Poverty and Equal Opportunities, for the Fight against Social Fraud and for Asylum and Migration, as well as numerous senior representatives of the Federal Government. She held meetings with the Minister-President of Flanders and the Minister of the Government of the Brussels-Capital Region responsible for employment and the economy, as well as representatives of the French community and the Walloon regional governments. The Special Rapporteur also met with representatives of the Federal Parliament, law enforcement authorities, the judiciary, State prosecution, the Federal Migration Centre, the National Commission for the Rights of the Child and representatives of civil society.

3. The Special Rapporteur held meetings in Brussels and conducted visits to the specialized victim support centre Pag-Asa and the reception centre for unaccompanied foreign children Minor-Ndako. She also travelled to Antwerp, Ghent and Namur in order to get information on the issues relating to her mandate from the perspective of the municipal authorities and local civil society organizations, including the Payoke victim support centre in Antwerp.

4. The Special Rapporteur takes this opportunity to thank the Government for its invitation and the cooperation extended prior to and during her visit. She is also grateful to all her interlocutors, including representatives of authorities at the federal, regional, community and municipal levels, civil society organizations and especially the victims who engaged with her during the visit. She also wishes to thank the Office of the United Nations High Commissioner for Human Rights Regional Office for Europe for the assistance provided.

II. Background

5. Belgium is a high-income country in Western Europe with a population of 11.2 million.[1] Since gaining independence in 1830, the State's structure has evolved from a unitary State to the current federal State composed of communities and regions.[2] The process of devolution began in the 1970s and has gone through several phases.

6. Belgium comprises three communities: the French, the Flemish and the German-speaking community; and three regions: the Flemish, the Walloon and the Brussels-Capital regions.[3] The federal, regional and community levels of governance have their own legislative and executive bodies[4] and respective competencies. Within their competencies

[1] See World Bank, 2015 World View (2013 data), available from http://wdi.worldbank.org/table/1.1.

[2] Article 1 of the Constitution.

[3] Articles 2 and 3 of the Constitution.

[4] In the case of the Flemish region and the Flemish community, the powers are exercised by a single parliament and a single government.

and territory, the regions and communities are independent and their legal acts have the same legal value as federal laws.

7. The federal level has competencies in matters relating to all Belgians, i.e. foreign affairs, justice, social security and internal affairs. The competencies of the regions are related to territory and include the economy, employment and housing, while those of the communities relate to the individual (person-related), including culture, education and matters related to health and family policy. In 2014, Belgium finalized the sixth State reform, according to which several federal competencies, including for family benefits, the labour market and health and social care, were transferred to the regions and communities.

8. Belgium is a country of immigration. The number of immigrants has been on the rise in the past three decades, reaching a record 138,071 in 2011.[5] The majority of immigrants, 63 per cent, come from other European Union member States. The percentage of immigrants from countries that joined the European Union in 2004 and 2007 more than tripled between 2003 and 2012 to 24 per cent, while the number of those from third countries decreased substantially.[6] The foreign-born population amounted to 19 per cent in 2013.[7]

9. The Belgian economy, which was affected by the global financial crisis and plunged into recession, has been growing since early 2013. The Organization for Economic Cooperation and Development estimates that the recovery remains fragile and the country still has low employment rates and a high public debt, and that the foreign-born population suffers from poor employment prospects and poverty.[8]

III. Normative and institutional framework

A. International and regional legal framework

10. Belgium has ratified or acceded to all core human rights instruments and their optional protocols, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also signed in 2005 but has not yet ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment.

11. Belgium has ratified the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It is also a party to all International Labour Organization (ILO) fundamental conventions, including the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). In 2004, it ratified the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

[5] There was an approximately 10 per cent decrease in the numbers in 2012 (124,717 immigrants), the reasons for which are to be determined. See Federal Migration Centre, Rapport annuel migration 2013, pp. 18–19, available from www.diversite.be/sites/default/files/documents/publication/rapport_cntr_2013_migration_fr_web.pdf.

[6] Ibid., pp. 20–21.

[7] This figure includes those of foreign nationality who migrated to Belgium (11 per cent) and those who obtained Belgian nationality after birth (8 per cent) (Ibid., pp. 28–29).

[8] See Organization for Economic Cooperation and Development Economic Surveys: Belgium 2015, p. 14, available from http://dx.doi.org/10.1787/eco_surveys-bel-2015-en.

Children. On 10 June 2015, after the Special Rapporteur's visit, Belgium ratified the ILO Domestic Workers Convention, 2011 (No. 189).

12. As a member of the Council of Europe, Belgium is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, in its article 4, prohibits slavery, servitude and forced or compulsory labour. The compliance of States with the Convention is monitored by the European Court of Human Rights. While the Court has already delivered judgements finding a violation of article 4,[9] it has not yet ruled against Belgium under the aforementioned article, despite having decided on the merits in several cases.[10] Belgium has ratified the Council of Europe Convention on Action against Trafficking in Human Beings, and its independent monitoring body conducted a mission to Belgium in October 2012, the report of which was published in September 2013.

13. As a member State of the European Union, Belgium is bound to adhere to the Charter of Fundamental Rights, which, in its article 5, prohibits slavery, servitude, forced or compulsory labour and trafficking in human beings. The European Union adopted several directives relevant for the mandate that Belgium incorporated into its national legislation.

B. National legal and institutional framework

Legislation

14. Belgian legislation does not contain specific provisions criminalizing slavery and the institutions and practices similar to slavery as defined in the 1956 Supplementary Convention, with the exception of forced marriage, nor does it contain explicit provisions on the prohibition of forced labour, in accordance with the international instruments ratified by Belgium. The approach taken by the authorities in the development of the legislative framework, which was from the outset very much linked to migrants and their residency status,[11] was not to enshrine separate criminal offences but to link them to the criminal offence of human trafficking.

15. Trafficking is defined in the Criminal Code, article 433 quinquies (1), as "recruiting, transporting, transferring, harbouring, receiving a person, or taking control or transferring control exercised over that person", for the purposes of the exploitation of prostitution or other forms of sexual exploitation, the exploitation of begging, providing labour or services in conditions contrary to human dignity, the removal of organs or in order to have the person commit a crime or an offence against his or her will. With the exception of the latter, the consent of the victim is irrelevant to establish the offence.

16. The basic offence is punishable by one to five years of imprisonment and a fine between 500 and 50,000 euros.[12] The aggravating circumstances that provide for increased penalties are laid down in articles 433 sexies to 433 octies and include abuse of authority and of a person's situation of vulnerability, the use of fraudulent tactics, violence, threats or any other form of constraint or where the offence was committed against a child.[13] The

[9] See, for example, *Siliadin v. France*, 2005, *Rantsev v. Cyprus and Russia*, 2010, and *C.N. v. the United Kingdom*, 2012.

[10] *Van der Mussele v. Belgium*, 1983, *Van Droogenbroeck v. Belgium*, 1982, and *De Wilde, Ooms and Versyp v. Belgium*, 1971.

[11] The relevant legislative provisions were first contained in the Law of 15 December 1980 on entry to the territory, stay, settlement and removal of foreigners.

[12] Article 433 quinquies (2). According to paragraph 3, the attempt is punishable by imprisonment of one to three years and fine of 100 to 10,000 euros.

[13] The maximum penalty is 20 years imprisonment and a fine of 150,000 euros.

latest amendment to the Criminal Code establishes the multiplication of the fine by the number of victims.[14]

17. In terms of economic exploitation, the Special Rapporteur notes that the provision referring to "labour or services in conditions contrary to human dignity" could include cases amounting to slavery and slavery-like practices. She regrets, however, the lack of specific criminalization of these practices that can occur in situations not necessarily linked to human trafficking. Furthermore, the Special Rapporteur was informed that, although the intention of the drafters of the legislation appears to have been to allow for "conditions contrary to human dignity" to develop through judicial interpretation, in some instances this has had a negative impact on legal certainty. Some prosecutors have been reluctant to bring cases to court owing to a lack of clarity as to when a certain situation reaches such conditions, and have preferred to prosecute employers through labour law and Social Criminal Code infractions, where the conviction was more likely to be secured. This consequently has had an impact on the protection and assistance warranted to the victims since they do not benefit from the multidisciplinary support system (see paras. 24–26 below). At the same time, the Special Rapporteur notes that the definition might potentially encompass a larger number of victims who are not necessarily in contemporary forms of slavery but in conditions of work that are exploitative, poorly paid and do not comply with the minimum labour standards.

18. The exploitation of begging is criminalized by article 433 ter (1), which defines this crime as "recruiting, training, diverting or retaining a person in order to engage him/her in begging, encouraging the person to beg or to continue begging, or putting the person at the disposal of a beggar so that he or she can use the person to arouse public sympathy", and "exploiting, in any way, the begging of a third person". The punishment provided is that of imprisonment of between 6 months and 3 years and a fine of 500–25,000 euros.[15] Article 433 quater specifies a higher penalty in cases of aggravating circumstances, including when a child is involved.

19. According to article 391 sexies of the Criminal Code, forcing someone to marry is punishable by 3 months to 5 years of imprisonment and a fine of 250–5,000 euros. An attempt to do so can result in a term of imprisonment of between 2 months and 3 years and a penalty of 125–2,500 euros.

20. The legal framework relating to article 433 quinquies is supplemented by the ministerial circular of 26 September 2008 on the implementation of multidisciplinary cooperation in respect of victims of human trafficking and the circular of 17 January 2007 of the Board of Prosecutors General relating to investigations and prosecutions (Col 01/2007), which sets out a list of indicators to help to assess the situations that are contrary to human dignity.[16] During her visit, the Special Rapporteur learned that the updated version of the 2007 circular would be finalized soon, while the ministerial circular was being revised. The revised circulars are intended to reflect new trends in terms of putting more focus on Belgian and other European Union victims and to better define what is meant by economic exploitation.

[14] Law of 24 June 2013 penalizing the exploitation of begging, prostitution and trafficking in human beings in consideration of the number of victims. The same applies for exploitation of begging in Articles 433 ter and quater.

[15] Attempted exploitation of begging is punishable by 1 month to 2 years of imprisonment and a fine of 100 to 2,000 euros.

[16] These include conditions relating to wages or payment (e.g., the withholding of wages, the provision of wages that are too low or no provision of days off), working conditions and working environment, housing circumstances, and dependency on the employer.

Institutional framework

21. In order to address those contemporary forms of slavery, which are caused by human trafficking, Belgium has established a comprehensive multidisciplinary cooperation mechanism involving various stakeholders at the federal, regional and community levels, which is commendable. The Special Rapporteur heard mainly positive reviews of the structures in place and the overall functioning of the referral system.

22. The political and strategic coordination of the mechanism is ensured by the Interdepartmental Coordination Platform, chaired by the Minister for Justice.[17] The Platform is composed of around 30 stakeholders, including representatives of the Prime Minister's Office and a number of federal public services,[18] the Board of Prosecutors General, the Federal Prosecutor's Office, the Federal Police, the State Security Service, the Federal Migration Centre and the non-governmental organization Child Focus. Pursuant to the Royal decree of 21 July 2014, among the Platform members are representatives of regional governments and of the three specialized centres for victims (Payoke, Pag-Asa and Sürya). The Platform meets twice a year and its day-to-day work in terms of managing the preparation and execution of decisions, drafting the national anti-trafficking action plan[19] and biennial governmental reports, among others, is managed by a bureau that meets monthly.

23. The role of the Federal Migration Centre[20] is to monitor and follow up on policy regarding human trafficking. It acts as an independent national rapporteur and as the secretariat of the Platform and facilitates coordination between the three specialized centres.[17] For its yearly reports, the Centre draws statistical data from six sources: the police, the social inspectorate, the Board of Prosecutors General, the Immigration Office, the specialized centres for victim support and the Criminal Policy Department. The Special Rapporteur learned that, despite attempts to launch a computerized centralized data collection system, no such system currently existed.

24. At the operational level, the specialized personnel of the local and federal police, social inspection services (Social Inspection Directorate General of the Federal Public Service for Social Security)[21] and labour inspection services (Directorate General for the Supervision of Social Legislation of the Federal Public Service for Employment, Labour and Social Dialogue) cooperate in order to identify situations of contemporary forms of slavery by performing monthly controls in predefined high-risk industry sectors in each judicial district.[22] If a presumed victim is detected either during the inspections or on the basis of a complaint, the reference magistrate to the Public Prosecutor's Office or the Labour Prosecutor's (Auditor's) Office, in case of economic exploitation, is informed, with the two often working in a collaborative manner. At the same time, one of the three specialized non-governmental organization-led centres Pag-Asa (Brussels), Sürya (Liège) and Payoke (Antwerp) must be contacted. These centres, run by multidisciplinary teams,

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[17] See Royal decree of 16 May 2004.

[18] As part of the most recent major reforms to the federal administrative structure of Belgium, former ministries were renamed federal public services.

[19] The third action plan, for the period 2015–2019, is being drafted.

[20] As part of the restructuring in March 2014 of the former Centre for Equal Opportunity and Opposition to Racism, a B-status national human rights institution, the Federal Migration Centre and the Inter-federal Centre for Equal Opportunities were created.

[21] Specialized units in each of the nine regional offices across the country.

[22] The competency for labour and social inspections is shared between the federal and regional levels. Regular meetings are held between the relevant stakeholders, such as the federal police, the inspections and the magistrates, at the local level — in each judicial district — organized by the specialized magistrates.

provide victims with shelter, psychosocial, medical, administrative and legal assistance. The Immigration Office also needs to be informed regarding the residency status of the (presumed) victim and only the three centres are competent for requesting residence permits on behalf of victims, including children, with this Office.

25. Presumed victims are granted a 45-day reflection period, during which they can decide if they wish to file a complaint or make a statement or if they prefer to return to their country of origin.[23] In order to obtain the status of official victim, presumed victims must meet the following three conditions: break all contacts with the presumed perpetrator; accept assistance offered by a specialized centre; and cooperate with the judicial authorities by making statements or by filing a complaint against the perpetrator or perpetrators. The Special Rapporteur heard of instances when the police would take victims' statements right away, without respecting the reflection period, and neglect to inform them of their rights and to put them in direct contact with a specialized centre.

26. As soon as a victim has lodged a complaint or made relevant statements, he or she is granted the status of "victim of human trafficking"[24] and is entitled to a three-month provisional residence permit, renewable once.[25] The victim's stay may be extended further by being granted a six-month residence permit, renewable every six months until the end of the judicial procedure, when the victim can be granted a permanent residence permit[26] or returns to his or her country of origin. In the case of unaccompanied children, who are provided with a legal guardian,[27] the three conditions are looked at with greater flexibility and the children are immediately issued with a three-month residence permit.

27. In 2013, 116 persons obtained official victim status and 72 received permanent residence.[28] In the same year, the three centres started 133 new programmes of support, of which 90 were for victims of labour exploitation and 1 was for a victim of forced begging. In total, 33 per cent of the victims were European Union nationals, including three Belgians.[29] The average duration of the assistance programme is 2–3 years.

28. Special reception centres for unaccompanied children provide similar support as the centres for adult victims. The Special Rapporteur visited Minor-Ndako in the Flemish community, which has the capacity to accommodate 86 unaccompanied children in residential and non-residential care. In the French community, Esperanto Mena is a smaller

[23] During this period, he or she is entitled to social assistance, including from a public social welfare centre; if he or she does not hold a residency permit, the specialized reception centre may issue him or her with an "order to leave the territory within 45 days".

[24] There is also a possibility of being granted provisional victim status by the magistrate to the Public Prosecutor's Office upon advice from other partners involved and on the basis of a list of criteria.

[25] The victim is entitled to social benefits, including accommodation, psychosocial help and legal aid, and is authorized to work.

[26] In the event that his or her complaint results in a legal conviction, or if the magistrate to the Public Prosecutor's Office or the Labour Prosecutor's Office has cited the element of trafficking in its indictment. The Public Prosecutor's Office can decide autonomously and at any stage of the procedure that the person concerned is no longer to be considered to be a victim, in which case the Immigration Office withdraws the residence permit. There is a list of reasons to justify doing so.

[27] Guardians, either professional or voluntary, deal with all the administrative and legal procedures related to the child. The system of guardians, overseen by the guardianship service within the Federal Public Service for Justice, was introduced for unaccompanied foreign children in 2004 (Title XIII, chapter VI, of the framework legislation of 24 December 2002 entitled "Guardianship of foreign unaccompanied minors", entered into force on 1 May 2004).

[28] See Federal Migration Centre, Belgium, 2013 annual report on human trafficking, p. 1. Available from www.diversitybelgium.be/annual-report-human-trafficking-2013.

[29] Ibid., pp. 105–106.

centre in a secret location with around 15 places available for unaccompanied children who are victims of human trafficking.

29. The Belgian approach focuses primarily on the link between victim status and the residency permit, which indicates that it was primarily construed for foreign non-European Union (third country) victims in an irregular situation. According to some of the Special Rapporteur's interlocutors, this approach is not relevant in the current circumstances, which is characterized by a considerable number of European Union victims whose primary interest is to return home. Others expressed the opinion that the system does not need changing since the victims, notwithstanding their nationality, can still benefit from the assistance offered by the specialized centres.

IV. Main findings relevant to the mandate

A. Economic exploitation and forced labour

30. Given that forced labour is not criminalized as a separate offence, situations that might amount to forced labour fall within the broader framework of economic exploitation, i.e. "labour or services in conditions contrary to human dignity", in accordance with article 433 quinquies of the Criminal Code. The Special Rapporteur was informed that there are evidentiary challenges that often prevent convictions from being handed down for this offence, as a result of which labour prosecutors prefer to focus on infractions of the Social Criminal Code, which still provide victims with compensation.

31. The Social Criminal Code encompasses social fraud and illegal work and its implementation is overseen through inspections executed at the district level.[30] It includes provisions on labour rights and regulates offences related to working conditions (health and safety at work), child labour, undeclared and illegal work, social documentation and social security payments. Depending on the gravity of infraction, a range of penalties are foreseen (four levels), from an administrative fine of 10–100 euros (level 1) to 6 months to 3 years of imprisonment and/or a penal fine of 600–6,000 euros or an administrative fine of 300–3,000 euros (level 4).[31]

32. Given the above, the present analysis will focus on economic exploitation, which can amount to forced labour, although the number of cases is impossible to distinguish owing to them being encompassed within the broader framework of economic exploitation. Certain situations of economic exploitation also include an element of debt bondage, prohibited under the 1956 Supplementary Convention,[32] an example of which was provided in the case of an undocumented Chinese worker who was subjected to debt bondage by a construction company.[33]

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[30] There is one cell composed of labour and social inspectorates, as well as the National Employment Office and the National Office of Social Security, per judicial district. Each is presided by the labour auditor and includes representatives of the Federal Public Service for Finance, the magistrate in the prosecutor's office and a member of the federal police.

[31] See article 101 of the Social Criminal Code.

[32] Article 1 (a) of the Convention states that debt bondage is understood as the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

[33] See Federal Migration Centre, Belgium, 2013 annual report on human trafficking, p. 27.

33. According to the information received by the Special Rapporteur, economic exploitation has been on the rise in recent years, to the point where it is now behind most cases of human trafficking. The traditionally high-risk sectors include construction and renovation, transport, agriculture and horticulture, domestic work, meat processing, retail, car washing and hospitality. In the absence of centralized statistics, the data provided by the Board of Prosecutors General, not inclusive of the cases taken up by the labour prosecutors, shows that, in 2014, 115 cases of economic exploitation were heard in courts (44.1 per cent out of all cases).[34]

34. While economic exploitation and infractions of the Social Criminal Code affect workers regardless of their nationality, the Special Rapporteur learned that the number of workers from other European Union countries who are victims of economic exploitation is on the increase, to the point that they now constitute the majority of victims. In many cases, workers experience situations of long working hours with insufficient pay, unsafe working conditions and unpaid social security contributions.[35] Their passports are sometimes withheld by their employers and they might also be subjected to intimidation and violence or threats of violence.

35. According to the information obtained, there is an increasing number of bogus self-employed[36] and posted workers from the European Union. Posted workers[37] are in many instances subject to the above-mentioned abuses and exploitation. The most recurrent problems include the non-payment of social contributions in their country of origin, which calls for better coordination between the relevant authorities in the countries of posting and of origin.[38] Workers in the construction sector often find themselves in a situation of bogus self-employment that entails the necessity of paying their own social contributions, of which they become aware only once they have already become heavily indebted.

36. For the reasons mentioned above, including for investigations to be less burdensome, the vast majority of these cases are prosecuted under the Social Criminal Code for social fraud and illegal employment of foreign workers. For example, the Special Rapporteur was informed that in the Ghent Court of Appeal, 2,114 cases of illegal employment of foreigners were opened in the period from 2009 to 2013, but only 22 were linked to economic exploitation. The nationalities most affected were Bulgarians (1,281) and Romanians (569).

37. The especially vulnerable situation of undocumented third-country workers to labour rights violations was also brought to the Special Rapporteur's attention. Owing to the fear of expulsion from the country should they not be granted official victim status, as their exploitation would not constitute "labour or services in conditions contrary to human dignity",[39] they choose to continue in an exploitative situation rather than report their

[34] Other cases included 112 cases of sexual exploitation (43.24 per cent) and 14 cases of forced begging (5.41 per cent).

[35] In Antwerp, she was presented with an example of a good practice for combating social dumping in the construction sector, in which workers wore a badge and a helmet that automatically showed whether the employee was registered with the social security authorities.

[36] Someone who voluntarily or under force takes on a self-employed status while, in reality, the person works under the subordination of an employer as a salaried worker.

[37] In Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, a "posted worker" is defined as a worker who is employed in one European Union member State and sent by his or her employer to undertake work in another on a temporary basis.

[38] The Posting of Workers Enforcement Directive, adopted in May 2014, although not yet transposed into Belgian national legislation, is meant to ensure that Directive 96/71/EC is better applied in practice.

[39] A special aggravating circumstance could be applied due to "abusing the particularly vulnerable

employer to the authorities. In a positive development, in 2013[40] Belgium transposed Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, which, inter alia, imposes financial penalties on employers for employing irregular migrants and provides for the repayment of outstanding wages, taxes and social security contributions. It was pointed out by interlocutors, however, that this remedy is contingent on securing access to free legal aid, which is not always possible, and that the repayment of wages is very difficult once the undocumented worker is no longer in the country.

38. The Special Rapporteur heard concerns regarding prison work, managed by the Prison Labour Agency, an autonomous structure under the Federal Public Service for Justice, especially in terms of absence of a work contract for prisoners engaged in working for private businesses. The main concern expressed was that they are paid wages well below the minimum hourly rate. The Special Rapporteur notes the considerable difference between the pay received for an hour of prison work, ranging from 0.62 euro cents to 3.6 euros, amounting to a salary of 120–450 euros per month, and the minimum salary in Belgium of 1,501.82 euros per month. At the same time, she was assured of compliance with the legislation regarding occupational safety and health standards and the use of profits obtained from collaboration with companies (products marked "cell-made") for vocational training and other projects. The Special Rapporteur notes that the ILO Forced Labour conventions No. 29 and No. 105 do not prohibit prison labour as such but do provide for specific conditions to be met, including for prisoners to offer themselves voluntarily to work, for example, by providing written consent, and for the minimum conditions with regard to wages, social security benefits and occupational safety and health to be met.

B. Domestic servitude

39. The estimates of the number of those involved in domestic work in Belgium vary from 42,100,[41] with more than 90 per cent of them women, to 100,000.[42] The majority of those taking up employment in domestic work are migrants and large numbers of domestic workers appear to be in an irregular situation. Domestic workers in Belgium are permitted to join trade unions, although their union membership is very limited.

40. The legal framework on domestic work in Belgium is complex, with workers covered by at least six different contractual arrangements, a situation that creates inequalities among domestic workers in terms of employment, working conditions, labour protection and social security coverage. This complexity also makes it difficult for workers to be aware of their rights and can result in employers abusing this situation to subject domestic workers to exploitation.[43] This is even more the case since the specificities of the

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situation where the person is because of his/her illegal or precarious administrative situation ... so that the person has in fact no real and acceptable choice but to submit to this abuse". The punishment foreseen is imprisonment from 10 to 15 years and a fine of 1,000 to 100,000 euros (article 433 septies of the Criminal Code).

[40] Law of 11 February 2013 providing for sanctions and measures against employers of illegally-staying third-country citizens.

[41] See data for 2008 available from http://laborsta.ilo.org.

[42] Data by the trade union CSC Food and Services covering the sector of domestic work. See International Migration Papers No. 116, Promoting integration for migrant domestic workers in Belgium, ILO, 2013, available from www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_222293.pdf, p. 2.

[43] Three types of contracts exist for establishing a direct labour relationship between private employers or households and the three types of domestic worker: domestic servants, non-manual domestic

sector itself make domestic workers, especially those who reside in the household, socially isolated and particularly vulnerable to human rights violations, economic exploitation, physical and verbal abuse and, in extreme cases, subjugation to domestic servitude and domestic slavery.[44] The irregular situation of domestic workers can only exacerbate this.

41. While there is no specific criminalization of domestic servitude or slavery in Belgian legislation, the Special Rapporteur was informed of at least one example where a conviction was obtained for economic exploitation of a domestic worker under article 433 quinquies of the Criminal Code, with the victim benefiting from the referral system. Another case from 2008, involving 17 individuals allegedly subjected to domestic servitude by a hotel guest in a luxurious Brussels hotel, in which the court procedure is still ongoing, was also brought to the Special Rapporteur's attention.

42. The overall number of prosecutions is low, however. This is due to the difficulty in detecting cases, with domestic work happening mainly in private households and sometimes linked to servile marriage, with victims being forced to perform household chores in line with gendered stereotypes.[45] The police and inspectorates need to obtain an authorization from an investigating judge granting them access to private homes, on the basis of a justified request and only for serious offences. Furthermore, in terms of investigation, obtaining sufficient proof seems to be problematic. According to the information obtained, cases of domestic servitude could also be prosecuted under the Social Criminal Code.

43. In an attempt to regulate the sector of domestic work, in 2004 the federal Government introduced a system of service vouchers,[46] which is used extensively. According to National Employment Office data, there were 0.975 million users by the end of 2014 and 149,782 workers were participating in the system at the end of 2013. The Special Rapporteur acknowledges the positive effects of this system as it discourages informal employment, gives domestic workers an employment contract, a monthly salary based on current wage scales, social security coverage and insurance for work accidents and breaks the social isolation of workers by introducing the service voucher agency as the third party, namely, the employer. At the same time, several stakeholders pointed out the system's deficiencies, such as the fact that it does not encompass all types of domestic work, that it sustains a vulnerable sector of workers and should be therefore an intermediate rather than a long-term measure, and the high cost it represents for the regional governments.[47]

44. The Special Rapporteur was encouraged by the work that Belgium, hosting 203 foreign diplomatic missions and 109 international organizations, has undertaken over more than a decade with regard to cases of domestic servitude in diplomatic households and safeguarding the rights of victims. The central role in terms of prevention, monitoring, mediation and administrative punishment is played by the Protocol and Security Department of the Federal Public Service for Foreign Affairs, in cooperation with the

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workers and manual domestic workers. There is also a service voucher system, the au pair system and the system for domestic workers working as diplomatic personnel (see International Migration Papers No. 116, pp. 16–22, 61).

[44] See A/HRC/15/20, paras. 16–18.

[45] Ibid., para. 43.

[46] At the time of the visit, vouchers were tax deductible (30 per cent tax reduction), bought by private individuals and given to domestic workers (signed and dated) for each hour worked. The domestic worker submits the voucher to the service voucher agency (employer) in exchange for a pay (the value of the service voucher is 7.5 euros, plus the federal Government subsidy of 13.3 euros).

[47] In accordance with the sixth State reform, the service voucher system has been a regional competence since 1 July 2014.

Federal Public Services for Employment, Labour and Social Dialogue. A set of rules regarding the employment of private domestic workers by diplomats, of which there are around 7,000, has been established in order to prevent cases of exploitation and servitude, including: (a) work contract checks performed by the Protocol Department before allowing the issuance of visas to workers; (b) a compulsory interview of domestic workers to inform them about their rights and duties, held at the Belgian Embassy before coming to Belgium; and (c) a yearly personal interview held at the Protocol Department to renew the special working permit.

45. Given the diplomatic immunities and privileges of diplomats set out in the 1961 Vienna Convention on Diplomatic Relations, which prevents cases concerning diplomats from being taken to court, the Commission for Good Offices was established in May 2013 to find an out-of-court solution through mediation for serious cases of labour standards abuses and domestic servitude. It is chaired by the Director General of Supervision of Social Legislation (Federal Public Services for Employment, Labour and Social Dialogue) and includes several other federal public services and trade union representatives. The Commission deals with three to four cases of domestic servitude per year. While diplomats have immunity from criminal prosecution, the domestic worker can still benefit from the system in place for those with the status of official victim.[48] Furthermore, in cases of unresolved credible complaints regarding abuses of domestic workers, the diplomat in question, or even the whole diplomatic mission, can be refused visas for any new domestic worker.

46. The Special Rapporteur was also interested in obtaining information on the vulnerability of au pairs to domestic servitude, but to no avail. It would appear that the issue has not received much attention in Belgium, although the Special Rapporteur was informed subsequently that the 2014 Federal Government Coalition Agreement foresees an initiative to be undertaken in consultation with the regions aimed at combating abuses in the framework of the status of au pairs.[49]

C. Forced child begging

47. The Special Rapporteur was presented with information about numerous instances of begging, especially begging with children and child begging, primarily in Belgian cities. It is important to note that begging as such is not criminalized in Belgium and a case-by-case approach is necessary to establish whether the situation is one of forced begging, as criminalized in the Criminal Code and prohibited under international law.

48. In terms of international standards relevant for the mandate, forced begging is prohibited under the ILO Forced Labour Convention, 1930 (No. 29), and could in certain cases meet the international definition of slavery. Moreover, forced child begging violates a number of rights under the Convention on the Rights of the Child, including article 32 (1), which explicitly prohibits the economic exploitation of children. It falls under the worst forms of child labour, in accordance with the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and can constitute a violation of the prohibition on delivering a child for exploitation, as per the 1956 Supplementary Convention.[50]

[48] See Ministerial Circular of 26 September 2008.

[49] See www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf, p. 156.

[50] Under article 1 (d) of the Convention, States parties agree to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of any institution or practice whereby a child or young person under the age

49. In Belgium, putting children at the disposal of a beggar so that he or she can use them to arouse public sympathy and inciting children to beg are criminal offences.[51] There are, however, less clear-cut cases of child begging, where a parent begs with his or her child or children. This so-called "passive begging", where a begging parent is only accompanied by his or her child or children, who are not themselves begging, is not criminalized.

50. This is exemplified by the 26 May 2010 decision of the fourteenth Chamber of the Brussels Court of Appeals (Arrêt No. 747), which ruled that, while a situation of a parent begging with his or her children in order to provoke the pity of passers-by is not desirable, it does not constitute a penal offence.[52] The Special Rapporteur's interlocutors mainly agreed on the need to tackle the situation of parents begging with their children by adopting a social rather than a criminal law approach. However, there have been some opposing views and, in 2013, there was a discussion in the Belgian senate on a draft law aimed at amending the relevant provisions of the Criminal Code by penalizing all parents begging with their children.[53] The Special Rapporteur was informed that the debate on this amendment had been adjourned.

51. The Special Rapporteur agrees about the necessity to address the root causes of the problem and remains interested in the outcome of discussions of the working group on forced begging established in the Federal Public Service for Justice. The importance of focusing on prevention is even more evident since those involved in begging, including children, appear to belong mainly to the Roma community,[54] the members of which are marginalized and discriminated against, including in terms of access to basic social services, and often victims of prejudice and racism.[55]

52. The representatives of Roma non-governmental organizations with whom the Special Rapporteur met explained that begging with children was mainly due to the poverty of these communities, which are not homogenous and lack proper childcare arrangements. They adamantly dismissed the notion that it was part of Roma culture to beg, as portrayed by some. They emphasized the need for assistance to be provided to improve the socioeconomic situation of the members of these communities and for additional measures

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of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

[51] See article 433 ter of the Criminal Code.

[52] The Committee on the Rights of the Child, referring to this decision, called upon Belgium to expressly ban the use of children for begging on the streets whether or not the adults concerned involved are parents (CRC/C/BEL/CO/3-4, paras. 72 and 73). The Belgian child rights non-governmental organization coalition (CODE) commented by emphasizing the need to address the root causes of the problem and not to criminalize family members who themselves were extremely vulnerable. See www.lacode.be/IMG/pdf/Analyse_Obs_fin_Mendicite.pdf). Upon the coalition's request for clarification, the Chair of the Committee, in a letter dated 17 June 2013 explained that the Committee's recommendation did not imply the need to penalize begging and imprison parents begging with a child.

[53] Proposition de loi modifiant et complétant les dispositions de l'article 433 ter et suivants du Code pénal relatif à l'exploitation de la mendicité en vue d'interdire toute forme d'utilisation d'une personne a fortiori d'un enfant dans une démarche de mendicité, 5-1477/1, Senate, 10 February 2012.

[54] According to estimates, there are some 30,000 Roma living in Belgium, including those having Belgian nationality and Eastern European Roma whose immigration status is in many cases precarious (National Roma Integration Strategy, Belgium, 2012).

[55] This is not Belgium-specific. See the 2012 report prepared for the European Commission entitled "Report for the study on typology and policy responses to child begging in the EU", and RACE in Europe, *Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples*, London, September 2014.

to ensure their integration, including customized immediate support and equal access to employment, skills training, housing and education.

53. While the social approach is important, the Special Rapporteur wishes to emphasize the need to remain vigilant in order to properly detect and identify children who are indeed exploited, either by being forced to beg by their parents or guardians or by other adults, and to bring perpetrators to justice, always with the best interest of the child as the primary consideration. She notes that a limited number of convictions under article 433 quinquies of the Criminal Code for forced begging (not limited to children)[56] and a low number of cases investigated by the police might indicate a lack of proper victim detection and identification.

54. The Special Rapporteur is especially concerned about the information received that situations of adults begging with children, in which the adult is not necessarily the parent, or of children begging alone were not taken up by the front-line officials and that they have avoided taking action, effectively meaning that children who are victims of forced begging (or the adults or parents with them) are not identified and provided with the appropriate protection and assistance. The official stakeholders with whom the Special Rapporteur met referred to the complexity of situations and the difficulties in establishing evidence of forced begging, including when children are involved.

D. Forced marriage

55. Forced marriage was criminalized in Belgium in 2007 through the inclusion of article 391 sexies in the Criminal Code.[57] Other relevant provisions include article 146 of the Civil Code, requiring the need for consent to marriage, and article 146 ter, stipulating that marriage is not valid either when contracted without the free consent of the two spouses or when the consent of at least one of the spouses was obtained through violence or threat. The recent amendment to the article 433 quinquies,[58] which added to the definition the words "taking control of the person", was introduced, inter alia, to cover the situations of forced marriage.

56. Results of a study on the prevalence of forced marriage in the Brussels-Capital region[59] show the difficulty of obtaining reliable data on the phenomenon of forced marriage. According to the official statistics, there are between 10 and 15 cases of forced marriage per year in Belgium.[60] One of the challenges in relation to forced marriages, as explained to the Special Rapporteur by the researcher, is that it is underreported, either because of the victims' lack of awareness about it being a criminal offence, fear of family retaliation or the absence of proper victim detection and identification.

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[56] For example, the decision of the Sixth Chamber of the Criminal Court in Nivelles of 25 January 2013 involved a Slovakian defendant who was exploiting the begging of persons with disabilities.

[57] See Act of 25 April 2007 inserting article 391 sexies in the Criminal Code and amending certain provisions of the Civil Code to make forced marriage a criminal offence and broadening the grounds for annulment of such marriages.

[58] See Law of 29 April 2013 amending article 433 quinquies of the Criminal Code for the purpose of clarifying and extending the definition of trafficking in human beings.

[59] See Nawal Bensaid and Andrea Rea, Etude relative aux mariages forcés en région de Bruxelles-Capitale, 2012, available from http://germe.ulb.ac.be/uploads/pdf/articles%20online/rapportMF2013NawalB.pdf.

[60] The police statistics showed 11 formal complaints of forced marriage in 2013, compared with 14 in 2012, 12 in 2011, and 15 in 2010 (Police Criminal Statistics).

57. This points to the fact that, while criminalization of forced marriage is important and in line with international standards, namely, the relevant provisions of the 1956 Supplementary Convention, which prohibits servile marriage, the preventive and protection aspects are crucial. The Special Rapporteur was encouraged by the attention that the Government is giving to this issue and the work undertaken by non-governmental organizations on forced marriages, also with the financial support of the authorities.[61] She wishes to emphasize the need for this engagement to continue, including in terms of awareness-raising and providing victims with specialized assistance.

V. Continuing challenges to eradicating contemporary forms of slavery

A. Prevention

58. In terms of prevention, it is essential that the root causes that make people vulnerable to contemporary forms of slavery, such as poverty, inequality, social exclusion and discrimination, be addressed. This can be achieved by empowering individuals, focusing particularly on the most vulnerable, including migrants, especially those in an irregular situation, children, persons of foreign origin and Roma, and by guaranteeing their human rights.

59. At the federal level, the Government is tackling poverty and social exclusion through policy-level action: the third multi-year federal poverty reduction plan was being drafted at the time of the Special Rapporteur's visit; Belgium publishes a biannual report on poverty analysing recent trends, political measures and studies on the subject; and it has adopted a national action plan to fight child poverty. In order to ensure mainstreaming of the issue across the federal Government, a network of anti-poverty officers and the system of "experts by experience" were introduced. To address the social exclusion of immigrants, the Flemish and the Walloon governments established civic integration programmes.[62] The Inter-federal Centre for Equal Opportunities is mandated to promote equality and fight discrimination, and legislation to that effect has been adopted at different levels.

60. In March 2012, Belgium launched a national Roma integration strategy, and the Special Rapporteur was informed first-hand about the work undertaken by Roma mediators and community stewards deployed in cities with a high percentage of Roma. In Ghent, the Special Rapporteur was provided with information on an outreach programme aimed at bringing those most vulnerable into contact with the appropriate services. Similarly, in Namur, a multidisciplinary team of the social cohesion department carries out a number of activities for those in need.

61. In terms of poverty alleviation, the municipal public social welfare centres offer assistance, in the form of either a right to social integration by means of employment or an integration income or the right to social assistance (material or non-material aid). Given

[61] For example, the network Reseau mariage et migration, composed of 21 associations, has organized training sessions and awareness-raising campaigns.

[62] The Council of Europe European Commission against Racism and Intolerance referred to a conceptual problem with the integration policies of Belgium, focusing only on what immigrants should do rather than looking at it as a two way process, including intercultural dialogue. See www.coe.int/t/dghl/monitoring/ecri/country-by-country/belgium/BEL-CbC-V-2014-001-ENG.pdf, para. 117.

that the right to reside in Belgium is a prerequisite for being eligible for this assistance, the Eastern European Roma communities do not in general have access to it.

62. The Special Rapporteur was encouraged by the programmes and policies in place at the federal, regional and community levels aimed at addressing poverty and marginalization of the most underprivileged parts of the population. However, according to the information obtained, the level of poverty in Belgium has not changed considerably: in 2013, 20.8 per cent of Belgians were at risk of poverty or social exclusion.[63] Moreover, vulnerable groups continue to face discrimination and obstacles to the full enjoyment of their economic, social and cultural rights, especially in terms of access to education, vocational training, employment, health care and housing.

63. Another important part of the prevention work is raising awareness regarding contemporary forms of slavery. The Special Rapporteur received information about several initiatives undertaken by the authorities and other actors, such as specialized centres, including the development of a brochure for medical personnel and a multilingual leaflet about the referral system in place. Nevertheless, she notes the absence of any awareness-raising campaigns aimed at the general public that could have a preventive effect.

B. Victim detection and identification

64. In order for victims to be able to gain access to the system of protection and assistance in place, should they not reach out to it independently, they need to be identified. Both official and unofficial stakeholders with whom the Special Rapporteur met highlighted the issue of proper victim detection and identification as crucial and at times problematic.

65. While noting the existence of specialized units that investigate claims of exploitation in slavery-like conditions within the inspectorates, the police and the Immigration Office, the Special Rapporteur emphasizes the need for other non-specialized front-line officials to acquire skills in victim detection and identification through appropriate training. Furthermore, she wishes to draw attention to the fact that focusing the controls by the police and social and labour inspectorates on high-risk sectors may impede the identification of victims in other, atypical sectors.

66. The Special Rapporteur also heard concerns that the emphasis of the existing framework of multidisciplinary cooperation on third-country nationals, especially those in an irregular situation, might have an impact on victim detection and identification by not taking into account the fact that victims of modern slavery can also include Belgians, other European Union nationals and those legally residing in Belgium.

67. The Special Rapporteur regrets that, according to the information received, children, including unaccompanied children, are not always perceived as potential victims of contemporary forms of slavery by front-line officials and that hardly any child victims have been officially identified. She is also concerned about children who are exploited in forced begging not being identified as potential or actual victims.

68. While the Special Rapporteur welcomes the recent legislative changes[64] introducing legal guardians also for unaccompanied children from the countries of the European

[63] Less than the European Union average of 24.5 per cent. See www.luttepauvrete.be/chiffres_nombre_pauvres.htm#4.

[64] Law of 12 May 2014 modifying Title XIII, Chapter VI "Unaccompanied minor aliens" of the Programme Law of 24 December 2002 (Loi du 12 mai 2014 modifiant le titre XIII, chapitre VI, de la loi-programme (I) du 24 decembre 2002 en ce qui concerne la tutelle des mineurs etrangers non

Economic Area[65] and Switzerland, she is concerned that not all guardians have the expertise to identify victims of contemporary forms of slavery. In this regard, she welcomes the first training session for guardians organized after her visit and the adoption of a circular aimed at, inter alia, improving the existing cooperation between those involved in identifying unaccompanied children and providing care.[66] The Special Rapporteur emphasizes the need for continued scrutiny to ensure that guardians strengthen their cooperation with the specialized staff of reception centres for unaccompanied children.

C. Right to an effective remedy

69. In the meetings held by the Special Rapporteur, issues related to the right to an effective remedy for victims of contemporary forms of slavery, including in terms of effective access to justice and adequate and prompt reparation, were often raised as problematic.

70. This was said to be partly due to the reduction in resources allocated to the specialized victim centres, resulting in victims not being able to secure the legal services of lawyers with experience in working with the centres and who were thus well acquainted with the legal procedure. Furthermore, a means test is applied, in which a certain threshold determines whether victims can gain access to free legal aid, and another threshold determines whether the aid can be provided partially free of charge. There are situations in which victims who are eager to rebuild their lives and manage to earn an income find that they are no longer entitled to free legal aid.

71. An additional impediment in terms of effective access to justice can be the lack of assistance of a qualified interpreter from the moment of detection through the judicial procedure. The Special Rapporteur is concerned that the specialized centres struggle with sufficient funds for interpreting, which could potentially put certain victims in a disadvantaged position in terms of access to justice.

72. The Belgian system provides the possibility for victims to obtain reparations in the form of compensation for the damage suffered. This can be achieved by the victim filing civil charges requesting compensation during the criminal trial. Victims can also make a separate civil application before the civil court[67] and the Federal Migration Centre and the specialized centres also may file a civil lawsuit either on their behalf or on behalf of the victim with his or her consent.[68]

73. However, the Special Rapporteur was informed that, in general, obtaining compensation proves to be difficult even when the court has ordered it, since offenders often arrange their finances to ensure that nothing is available to compensate victims. The individual has to enforce the judgement against the offender through a procedure that is lengthy and involves additional costs, when in fact, it was pointed out to the Special Rapporteur, it would be preferable for the State to ensure that compensation orders are enforced.

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accompagnes).

[65] European Union member States and the three European Free Trade Association States (Iceland, Liechtenstein and Norway).

[66] Circular of 8 May 2015 concerning the form used to identify unaccompanied children and concerning the provision of care, published on 20 May 2015, www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=15-05-20&numac=2015000265.

[67] The civil action is suspended until the definite ruling of the criminal judge.

[68] In 2013, its predecessor filed civil charges in 13 human trafficking cases (Federal Migration Centre, Belgium, 2013 Annual report on human trafficking, p. 1).

74. In cases where a victim cannot obtain compensation from the perpetrator, it is possible to apply for financial aid to the Commission for Financial Aid for Victims of Deliberate Acts of Violence, at the Federal Public Service for Justice, which manages a fund with the same name.[69] This avenue, subsidiary in nature and open for those in an irregular situation, is rarely used by the victims of contemporary forms of slavery and is subject to a number of conditions.[70] So far, only victims of sexual exploitation have been successful in obtaining compensation from the fund.

VI. Recommendations

75. **The Special Rapporteur would like to commend the Government of Belgium for the comprehensive legal and institutional framework that it has put in place to combat contemporary forms of slavery. In order to address the remaining normative and implementation gaps, the Special Rapporteur recommends that the State party:**

(a) Provide for contemporary forms of slavery not yet criminalized, such as forced labour and debt bondage, to be treated as distinct criminal offences, in accordance with the international treaties ratified by Belgium;

(b) Ensure that there are no differences in the judicial interpretation of "labour or services in conditions contrary to human dignity" enshrined in article 433 quinquies of the Criminal Code, including by providing additional guidance in the updated circular of 17 January 2007;

(c) Align domestic legislation with the provisions of the ILO Domestic Workers Convention, 2011 (No. 189), with the aim of minimizing the possibility of abuse and exploitation of domestic workers;

(d) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 2014 Protocol to the ILO Forced Labour Convention, 1930 (No. 29), and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) Establish an independent national human rights institution in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and include as a part of its mandate the fight against contemporary forms of slavery;

(f) Provide the newly created Federal Migration Centre and Inter-federal Centre for Equal Opportunities with sufficient resources to carry out their mandates effectively and ensure that this restructuring will not weaken human rights protection;

(g) Introduce a centralized system for the collection, recording and analysis of disaggregated statistical data on contemporary forms of slavery to assist with policymaking, while duly respecting data protection and privacy;

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[69] See articles 28–41 of the Law dated 1 August 1985 on, inter alia, fiscal measures and its amendments. See www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1985080130&table_name=loi.

[70] See "L'aide financière aux victimes d'actes intentionnels de violence et aux sauveteurs occasionnels", available from http://justice.belgium.be/fr/binaries/L%E2%80%99aide%20financi%C3%A8re%20aux%20victimes%20d%E2%80%99actes%20intentionnels%20de%20violence_tcm421-142524.pdf.

(h) Continue to focus on prevention by addressing the root causes of contemporary forms of slavery, notably by adopting effective measures to combat poverty and discrimination against those most vulnerable, including by ensuring their full enjoyment of economic, social and cultural rights and guaranteeing their de facto integration into the society;

(i) Organize sustainable nationwide awareness-raising campaigns to inform the wider public about the risks of contemporary forms of slavery and the referral system in place;

(j) Provide for a toll-free 24-hour helpline available in multiple languages to enable victims and vigilant citizens to report crimes of slavery and slavery-like practices and to obtain support and assistance;

(k) Ensure that the primary focus of the referral system, which should benefit all victims of contemporary forms of slavery, is on the human rights of the victim. In this regard, services provided should be tailored to the specific needs of the victims, regardless of their nationality or residency status in Belgium. Specific consideration should be given to those who are unable to cooperate with the judicial authorities, including in terms of being issued with a residency permit;

(l) Provide all actors forming part of the multidisciplinary approach to address contemporary forms of slavery with sufficient and sustainable human and financial resources in order to be able to carry out their functions;

(m) Strengthen victim detection and identification, including by providing continued specialized training to all front-line actors who regularly come into contact with potential victims and to the reference magistrates responsible for granting official victim status;

(n) Provide training on victim detection and identification to non-specialized front-line actors, such as health-care personnel, social workers, school staff, legal guardians of unaccompanied children and staff of the public social welfare centres and child protection services;

(o) Perform unannounced, well-coordinated and regular controls by properly trained and resourced inspection services and the police, and pay specific attention to sectors other than those traditionally considered to be high-risk;

(p) Strengthen cooperation with trade unions and employers' organizations in terms of combating forced labour;

(q) Organize training for all relevant front-line officers on prompt and effective investigation, including on proactive investigation techniques and the use of new investigation methods, on referral of victims, including child victims, and on victim assistance and protection;

(r) Adequately inform victims, once identified, of their rights, including the right to a 45-day reflection period, which should always be respected, and put victims in direct contact with one of the three specialized centres and provide them with quality interpretation, if needed;

(s) Ensure that victims are immediately appointed a specialized, free-of-charge and quality lawyer to represent them throughout the procedure, regardless of whether they are employed or not;

(t) Provide law enforcement officials, prosecutorial and judicial authorities with regular training on the relevant legislation in order to properly apply it in

practice and to ensure prompt and effective prosecution and punishment of perpetrators;

(u) Provide all victims of contemporary forms of slavery with access to an effective and appropriate remedy, including compensation. Ensure that compensation is enforced and that those who cannot obtain compensation through the court procedure benefit from it either by the Fund for Financial Aid for Victims of Deliberate Acts of Violence or by a newly established special compensation fund that is effectively accessible to all victims;

(v) Give priority attention to the vulnerability of children, especially unaccompanied children, to contemporary forms of slavery, including forced child begging, taking their best interest as a primary consideration. The Government, in cooperation with relevant stakeholders, should undertake a comprehensive study on the vulnerability of children to slavery and slavery-like practices. It should ensure the proper detection and identification of child victims, provide them with age-appropriate professional assistance and accommodation in specialized centres and access to quality education, should reduce the number of stakeholders in contact with the child and, if relevant, should grant them residency permits regardless of their cooperation with the authorities. Relevant actors working in the field of child rights at all levels, such as civil society organizations, child protection authorities and the independent institutions for children's rights, should be regularly consulted on matters relating to child victims;

(w) Conduct a comprehensive assessment of the au pair system in order to be able to appropriately tackle vulnerabilities of au pairs to contemporary forms of slavery;

(x) Continue to address the issue of forced marriages in cooperation with civil society organizations and other relevant stakeholders and provide the victims with appropriate specialized assistance, including in accommodation structures especially tailored for them;

(y) Ensure full implementation of European Union Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and continue to address the vulnerabilities of undocumented workers to economic exploitation, including by raising awareness of their rights to seek redress;

(z) Reflect the present recommendations, as relevant, in the national action plan on business and human rights that was being drafted at the time of the Special Rapporteur's visit.

76. In addition, the Special Rapporteur recommends that businesses pay attention to the risks of contemporary forms of slavery in operations in Belgium. Businesses should respect internationally recognized human rights, at a minimum those enshrined in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work, undertake ongoing human rights due diligence and ensure remediation of any negative human rights impact they cause or contribute to, in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.